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September 2, 2009

To: Members of Executive Board

From: The Acting Secretary

Subject: **Jersey—Publication of Detailed Assessment on Anti-Money Laundering and Combating the Financing of Terrorism**

Attached for the **information** of Executive Directors is the detailed assessment on Anti-Money Laundering and Combating the Financing of Terrorism for Jersey, in connection with the Financial Sector Assessment Program. The assessment was prepared by the Fund staff using the methodology endorsed by the Financial Action Task Force on Money Laundering in February 2004 and by the Fund's Executive Board in March 2004.

It is intended that this detailed assessment be published on the Fund's external website as requested by the authorities of Jersey and approved by management.

Questions may be referred to Mr. Hardy, MCM (ext. 38490).

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

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JERSEY

DETAILED ASSESSMENT
REPORT ON ANTI-MONEY
LAUNDERING AND
COMBATING THE FINANCING
OF TERRORISM

AUGUST 21, 2009

INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

Contents	Page
Acronyms	6
Preface	8
Executive Summary	9
1. General	15
1.1. General Information on Jersey	15
1.2. General Situation of Money Laundering and Financing of Terrorism	16
1.3. Overview of the Financial Sector	17
1.4. Overview of the DNFBP Sector	18
1.5. Overview of commercial laws and mechanisms governing legal persons and arrangements	22
1.6. Overview of strategy to prevent money laundering and terrorist financing	24
2. Legal System and Related Institutional Measures	28
2.1. Criminalization of Money Laundering (R.1 & 2)	28
2.1.1. Description and Analysis	28
2.1.2. Recommendations and Comments	37
2.1.3. Compliance with Recommendations 1 & 2	37
2.2. Criminalization of Terrorist Financing (SR.II)	38
2.2.1. Description and Analysis	38
2.2.2. Recommendations and Comments	43
2.2.3. Compliance with Special Recommendation II	43
2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)	43
2.3.1. Description and Analysis	43
2.3.2. Recommendations and Comments	52
2.3.3. Compliance with Recommendation 3	52
2.4. Freezing of funds used for terrorist financing (SR.III)	53
2.4.1. Description and Analysis	53
2.4.2. Recommendations and Comments	58
2.4.3. Compliance with Special Recommendation III	58
2.5. The Financial Intelligence Unit and its Functions (R.26)	58
2.5.1. Description and Analysis	58
2.5.2. Recommendations and Comments	67
2.5.3. Compliance with Recommendation 26	67
2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)	68
2.6.1. Description and Analysis	68
2.6.2. Recommendations and Comments	73
2.6.3. Compliance with Recommendations 27 & 28	73
2.7. Cross Border Declaration or Disclosure (SR.IX)	74
2.7.1. Description and Analysis	74
2.7.2. Recommendations and Comments	75
2.7.3. Compliance with Special Recommendation IX	75

3.	Preventive Measures—Financial Institutions	77
3.1.	Risk of money laundering or terrorist financing	77
3.2.	Customer due diligence, including enhanced or reduced measures (R.5 to 8).....	83
3.2.1.	Description and Analysis	83
3.2.2.	Recommendations and Comments	104
3.2.3.	Compliance with Recommendations 5 to 8.....	105
3.3.	Third Parties And Introduced Business (R.9).....	106
3.3.1.	Description and Analysis	106
3.3.2.	Recommendations and Comments	111
3.3.3.	Compliance with Recommendation 9	111
3.4.	Financial Institution Secrecy or Confidentiality (R.4)	112
3.4.1.	Description and Analysis	112
3.4.2.	Recommendations and Comments	113
3.4.3.	Compliance with Recommendation 4	113
3.5.	Record keeping and wire transfer rules (R.10 & SR.VII)	113
3.5.1.	Description and Analysis	113
3.5.2.	Recommendations and Comments	118
3.5.3.	Compliance with Recommendation 10 and Special Recommendation VII	119
3.6.	Monitoring of Transactions and Relationships (R.11 & 21)	119
3.6.1.	Description and Analysis	119
3.6.2.	Recommendations and Comments	122
3.6.3.	Compliance with Recommendations 11 & 21	122
3.7.	Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)..	122
3.7.1.	Description and Analysis	122
3.7.2.	Recommendations and Comments	128
3.7.3.	Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV	128
3.8.	Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)	128
3.8.1.	Description and Analysis	128
3.8.2.	Recommendations and Comments	132
3.8.3.	Compliance with Recommendations 15 & 22.....	132
3.9.	Shell Banks (R.18)	133
3.9.1.	Description and Analysis	133
3.9.2.	Recommendations and Comments	133
3.9.3.	Compliance with Recommendation 18	133
3.10.	The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17 & 25).....	134
3.10.1.	Description and Analysis	134
3.10.2.	Recommendations and Comments	146
3.10.3.	Compliance with Recommendations 17, 23, 25 & 29.....	146
3.11.	Money or Value Transfer Services (SR.VI)	147
3.11.1.	Description and Analysis (summary)	147
3.11.2.	Recommendations and Comments	149
3.11.3.	Compliance with Special Recommendation VI	149
4.	Preventive Measures—Designated Non-Financial Businesses and Professions.....	150
4.1.	Customer Due Diligence and Record-keeping (R.12).....	150
4.1.1.	Description and Analysis	150
4.1.2.	Recommendations and Comments	160
4.1.3.	Compliance with Recommendation 12	161
4.2.	Suspicious Transaction Reporting (R.16).....	161

4.2.1.	Description and Analysis	161
4.2.2.	Recommendations and Comments	167
4.2.3.	Compliance with Recommendation 16	167
4.3.	Regulation, Supervision, and Monitoring (R.24-25).....	167
4.3.1.	Description and Analysis	167
4.3.2.	Recommendations and Comments	171
4.3.3.	Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP).....	171
4.4.	Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)	171
4.4.1.	Description and Analysis	171
4.4.2.	Recommendations and Comments	173
4.4.3.	Compliance with Recommendation 20	173
5.	Legal Persons and Arrangements & Non-Profit Organizations.....	174
5.1.	Legal Persons—Access to Beneficial Ownership and Control Information (R.33) .	174
5.1.1.	Description and Analysis	174
5.1.2.	Recommendations and Comments	178
5.1.3.	Compliance with Recommendations 33	178
5.2.	Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)	178
5.2.1.	Description and Analysis	178
5.2.2.	Recommendations and Comments	181
5.2.3.	Compliance with Recommendations 34.....	181
5.3.	Non-Profit Organizations (SR. VIII).....	182
5.3.1.	Description and Analysis	182
5.3.2.	Recommendations and Comments	184
5.3.3.	Compliance with Special Recommendation VIII.....	184
6.	National and International Co-operation.....	185
6.1.	National Co-Operation and Coordination (R.31 & R. 32)	185
6.1.1.	Description and Analysis	185
6.1.2.	Recommendations and Comments	186
6.1.3.	Compliance with Recommendation 31	186
6.2.	The Conventions and UN Special Resolutions (R.35 & SR.I).....	186
6.2.1.	Description and Analysis	186
6.2.2.	Recommendations and Comments	188
6.2.3.	Compliance with Recommendation 35 and Special Recommendation I	188
6.3.	Mutual Legal Assistance (R.36-38, SR.V).....	188
6.3.1.	Description and Analysis	188
6.3.2.	Recommendations and Comments	203
6.3.3.	Compliance with Recommendations 36 to 38 and Special Recommendation V	203
6.4.	Extradition (R.37, 39, SR.V).....	203
6.4.1.	Description and Analysis	203
6.4.2.	Recommendations and Comments	207
6.4.3.	Compliance with Recommendations 37 & 39, and Special Recommendation V	208
6.5.	Other Forms of International Co-Operation (R.40 & SR.V).....	208
6.5.1.	Description and Analysis	208
6.5.2.	Recommendations and Comments	213
6.5.3.	Compliance with Recommendation 40 and Special Recommendation V ...	213

7. Other Issues	214
7.1. Resources and Statistics	214
7.2. Other relevant AML/CFT Measures or Issues	214
7.3. General Framework for AML/CFT System (see also section 1.1).....	214

Tables

1. Rating of Compliance with FATF Recommendations	215
2. Recommended Action Plan to Improve the AML/CFT System.....	220

Statistical Tables

1. Jersey–Financial Activity by Type of Financial Institution–December 31, 2008	17
2. Jersey–Designated Non-Financial Businesses and Professions–December 31, 2008	18

Annexes

Annex 1. Authorities’ Response to the Assessment	226
Annex 2. Details of All Bodies Met During the On-Site Visit	228
Annex 3. List of All Laws, Regulations, and Other Material Received	229
Annex 3. List of All Laws, Regulations, and Other Material Received	231

ACRONYMS

AG	Attorney General
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
the States	Assembly of the States of Jersey (Parliament)
BACS	U.K. Bankers' Automated Clearing Services
BBJL	Banking Business (Jersey) Law 1991
BCP	Basel Core Principles
BIC	Bank Identifier Code
CDD	Customer Due Diligence
CHAPS	U.K. Clearing House Automated Payments System
CIFL	Collective Investment Funds (Jersey) Law 1988
CL	Companies (Jersey) Law 1991
COBO	Control of Borrowing (Jersey) Order 1958
Customs	States of Jersey Customs and Immigration Service
DNFBP	Designated Non-Financial Businesses and Professions
DTOL	Drug Trafficking Offences (Jersey) Law 1988
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FSJL	Financial Services (Jersey) Law 1998
FT	Financing of terrorism
Gambling Regulation	Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 2008
GBP	British Pound
GNI	gross national income
GVA	gross value added
Handbooks	Collective name for the following sector-specific Handbooks:
Handbook for Accountants	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector
Handbook for Estate Agents and Dealers in High-Value Goods	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Estate Agents and High-Value Dealers
Handbook for Lawyers	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector
Handbook for Regulated Businesses	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws

IBAN	International Bank Account Number
IBJL	Insurance Business (Jersey) Law 1996
IFIS	JFCU Intranet Financial Intelligence System
IOFL	Investigation of Fraud (Jersey) Law 1991
JFCU	Joint Financial Crime Unit (the Jersey FIU)
JFSC	Jersey Financial Services Commission
JFSC Law	Financial Services Commission (Jersey) Law 1998
JSCCA	Jersey Society of Chartered and Certified Accountants
LEG	Legal Department of the IMF
LLP	Limited Liability Partnership
LP	Limited Partnership
MOU	Memorandum of Understanding
ML	Money Laundering
MLA	Mutual Legal Assistance
MLCO	Money Laundering Compliance Officer
MLO	Money Laundering (Jersey) Order 2008
MLRO	Money Laundering Reporting Officer
MSB	Money Service Business
NPO	Non-Profit Organization
NPO Law	Non-Profit Organizations (Jersey) Law 2008
OEM	Other enforceable means
OFAC	U.S. Office of Foreign Assets Control
OGBS	Offshore Group of Banking Supervisors
PEP	Politically-exposed person
POCL	Proceeds of Crime (Jersey) Law 1999
POC(CS)L	Proceeds of Crime (Cash Seizure) (Jersey) Law 2008
Police	States of Jersey Police
PPCEL	Police Procedures and Criminal Evidence (Jersey) Law 2003
PSP	Payment system provider
ROSC	Report on Observance of Standards and Codes
SAR	Suspicious Activity Report
SBL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
SBO	Proceeds of Crime (Supervisory Bodies) (Designation of Supervisory Bodies) (Jersey) Order 2008
SOCA	U.K. Serious Organised Crime Agency
SRO	Self-regulatory Organization
STR	Suspicious Transaction Report
TCB	Trust Company Business
TL	Terrorism (Jersey) Law 2002
Trusts Law	Trusts (Jersey) Law 1984
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNSCR	United Nations Security Council Resolution
WTR	Community Provisions (Wire Transfers) (Jersey) Regulations 2007

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Jersey is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in February 2008. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from October 29 to November 13, 2008, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and experts acting under the supervision of the IMF. The evaluation team consisted of: Terence Donovan (LEG, team leader) and the following LEG consultants: Mr. John Abbott; Ms. Gabriele Dunker; Mr. Peter Fennell (Office of the Attorney General, Australia); and Mr. Gary Sutton (U.S. Treasury). Ms. Margaret Cotter (LEG) also contributed to the legal aspects of the assessment. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Jersey at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Jersey's levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

The assessors would like to express their gratitude to the Jersey authorities for their cooperation, hospitality, and the high standard of organization and support throughout the assessment project.

EXECUTIVE SUMMARY

Key Findings

1. Financial services is a key sector of Jersey's economy accounting for approximately half of the total economic activity and a quarter of the workforce (approximately 13,400 employed). The banking, fund administration, and trust company sectors dominate, supported by extensive legal and accountancy practices. Financial services expertise and international reputation have been significant in attracting business to Jersey, as has the close working relationship with the U.K. financial system and the availability of favorable tax arrangements, in a developed, stable, and well-regulated jurisdiction.
2. A substantial proportion (believed to be around 90 percent in some sectors) of customer relationships is established with nonresidents. Arising from the nature of services provided and the typically nonresident, non face-to-face nature of much of the client relationships, Jersey's financial sector is inherently exposed to the risk of money laundering, particularly in the layering and integration phases. No particular vulnerability to terrorism financing (FT) was noted.
3. Jersey has put in place a comprehensive and robust AML/CFT legal framework with a high level of compliance with almost all aspects of the FATF Recommendations. The key elements were first introduced in the 1980s and have been kept updated, most substantially in the last two years to reflect the 2003 revision of the FATF Recommendations, in parallel with the implementation by EU member states of the EU Third AML Directive.
4. Both money laundering (ML) and financing of terrorism (FT) are criminalized largely in line with the international standard and Jersey has implemented the provisions effectively. With respect to both offences, however, some technical shortcomings have been identified that may limit somewhat the scope of criminal confiscation and the effectiveness of procedures for freezing of terrorist assets.
5. The Joint Financial Crime Unit (JFCU) carries out the role of a financial intelligence unit effectively and is benefiting from an increase in its resources. The JFCU receives a satisfactory flow of suspicious activity reports (SARs), mostly from banks and trust businesses (TCBs). Overall, there is scope to improve the timeliness of SAR submission and to increase the range of types of entities submitting SARs. Once the JFCU receives a SAR, it can consent or not to the financial activity that gave rise to the SAR. Nonconsent has the same effect as a freezing order.
6. Jersey has adopted a risk-based approach to AML/CFT at all levels—in determining the scope of AML/CFT requirements, in designing implementation measures, and in supervision. There is a high level of awareness of AML/CFT risks and requirements across the financial sector.
7. Jersey has a high level of compliance with the FATF Recommendations on preventive measures, with most deficiencies noted being technical in nature. CDD requirements for legal entities, trusts, and politically exposed persons (PEPs) largely comply with the international standard. One material issue relates to the extent of the concessions allowed to financial institutions and certain DNFBPs to rely on intermediaries and introducers in conducting CDD. While mostly valid in

principle, the concessions do not comply fully with the international standard. The resultant increase in risk is partially mitigated by strong Jersey Financial Services Commission (JFSC) supervision.

8. AML/CFT requirements for DNFBPs are largely the same as those applied to financial institutions. With the exception of trust company businesses, for which regulatory controls were well established and robust, AML/CFT measures for some DNFBP business were too recent to permit a realistic assessment of the effectiveness of implementation.

9. The JFSC is an effective regulator and supervisor for financial institutions and TCBs in Jersey and its AML/CFT role has been extended to include all other DNFBPs and money service businesses. Arising from its program of on-site inspections, many financial institutions and TCBs were required to implement CDD remedial measures. The range of available sanctions was found to be largely effective, proportionate, and dissuasive, but could be enhanced by providing the JFSC with the power to apply monetary fines.

10. With mandatory registration with the Registrar of Companies, Jersey has measures in place to obtain, maintain, and verify beneficial ownership information for companies, of which more than 34,000 were registered, most being private companies. Trusts have long been established in Jersey but no statistics are maintained on their number. Although trusts are not subject to any registration requirements, acting as a trustee is (with a few exceptions) a regulated activity and is subject to AML/CFT requirements, including to obtain, maintain, and verify beneficial ownership information.

11. Day-to-day cooperation on AML/CFT issues between the domestic authorities is close and effective. The Jersey authorities established in 2007 an AML/CFT Strategy Group to, inter alia, coordinate policy in implementing the FATF Recommendations.

12. At the international level, the legal framework for mutual legal assistance (MLA) and extradition is largely in place and effective. The JFCU is an active member of the Egmont Group and frequently exchanges information with other financial intelligence units. The JFSC is active in international cooperation and in a position to share information subject to appropriate safeguards. There is no statutory banking secrecy provision.

Legal Systems and Related Institutional Measures

13. Both ML and FT are criminalized largely in line with the international standard. All relevant offences under the standard are criminalized. However, the offences of acquisition, possession, or use do not extend to self-laundering and the scope of the offences of “concealing or disguising” and “converting or transferring” is not sufficiently wide due to the requirement that these acts are carried out with the purpose of avoiding a prosecution for a predicate offence. For terrorism-related ML, not all elements of the ML provisions of the Palermo and Vienna Conventions are covered. The FT offence does not extend to all offences under the FT Convention. These omissions also impact to some extent on the scope of criminal confiscation. Some further steps are needed to improve the effectiveness of procedures relating to requests for freezing of terrorist assets.

14. Jersey’s implementation of UNSCRs 1267 and 1373 is largely sufficient but attention should be given to procedures governing the receipt and assessment of foreign requests and to providing greater clarity regarding coverage of assets that are jointly or indirectly owned or controlled.

15. The JFCU—a joint police/customs unit—carries out the role of a financial intelligence unit effectively. The assessors welcomed the decision of the authorities to provide the JFCU with additional resources to deal with its expanding workload and allow it to provide additional guidance to reporting entities and improve its statistical database. Most of the SARs are received from banks or TCBs. Once the JFCU receives a SAR, it can either consent to the financial activity mentioned in the SAR or not. The effect of a consent may be to provide a defense against a potential charge of money laundering. Conversely, the absence of a consent inhibits the service provider from completing any financial service for the customer for fear of committing a money laundering offense, which has the same effect as a freezing order. Of course, it could also expose the reporting institution to potential litigation from the affected customer.

16. The legal framework for the investigation and prosecution of ML and FT offences operates effectively. The resource constraints affecting the JFCU had impacted on their capacity to conclude investigations and, by extension, on the development of cases for prosecution. It is clear from the statistics, however, that the AG is quite prepared to pursue ML-related cases and prosecute them in the Jersey Courts. In the period 2005-08, there were 12 relevant prosecutions, of which 10 resulted in a conviction for ML, and a substantial amount of funds was seized and confiscated. Jersey introduced a disclosure system for cross-border currency movements in January 2009 in line with the international standard but, as this occurred post-assessment, it was not possible to assess its effectiveness.

Preventive Measures—Financial Institutions

17. The primary legislative foundation for customer due diligence (CDD) and other preventive measures is the Proceeds of Crime (Jersey) Law 1999 (POCL), which defines ML to also include FT offences. The specific requirements are set out in detail in secondary legislation in the Money Laundering (Jersey) Order 2008 (MLO). This is supplemented by a Handbook issued by the JFSC in 2008 which includes further requirements (which qualify as other enforceable means (OEM) for purposes of the assessment), as well as additional guidance. The updating of the requirements in 2008 followed extensive consultations with industry and sought to address the detail of the international standard.

18. Jersey's CDD requirements comply with the FATF Recommendations in most respects and the deficiencies identified during the assessment are largely technical. A more material issue relates to the extent of the concessions allowed to financial institutions and certain DNFBPs to rely on intermediaries and introducers in conducting CDD; while valid in principle, the concessions are an overly-generous interpretation of the international standard and may increase the risk of abuse in some respects. However, the assessors noted that compliance with Jersey's CDD requirements was being tested by the JFSC through on-site inspections and that, in availing of the concessions, at least some reporting institutions applied additional controls in practice.

19. Customers and ultimate beneficial owners are required to be identified in all relevant cases (subject to the concessions mentioned above). Detailed CDD requirements apply to legal entities and trusts and enhanced due diligence is required for higher risk customers, including politically exposed persons (PEPs). Records of customer identification and of transactions must be retained for at least five years. All suspicious activity in relation to ML or FT is required to be reported to the JFCU.

20. While the volume of SARs reported to the JFCU appeared satisfactory, there is some scope to improve the timeliness of reporting. Banks and TCBs accounted for the bulk of the reported SARs, although efforts were being made to encourage other reporting entities to increase filing rates. The legal protection for those filing should be limited to those acting in good faith and the tipping-off offence needs to be broadened to comply with the international standard. There was no requirement for financial institutions to have an independent audit function to test for AML/CFT compliance.

21. Implementation of AML/CFT measures by Jersey financial institutions is generally strong. The assessors found a high level of awareness of AML/CFT risks and requirements during their discussions both with the authorities and the private sector, including banks and other financial institutions, trust company businesses, lawyers, and accountants.

22. The JFSC has demonstrated that it is an effective regulator and supervisor for financial institutions and TCBs in Jersey and, for AML/CFT purposes, its role was extended in 2007 to cover money service business and in 2008 to include the remainder of the DNFBPs—in particular lawyers and accountants. In addition to taking a leading role in consultation and outreach, the JFSC has been delivering an active program of on-site inspections, including for AML/CFT. Many financial institutions and TCBs had been required to implement remedial measures to bring their CDD information, including on beneficial owners, into line with the latest requirements. While implementation in some TCBs was found to be effective, serious deficiencies identified in others have resulted in sanctions, including termination of businesses in Jersey in some cases. The range of available sanctions was found to be largely effective, proportionate, and dissuasive, but could be enhanced by providing the JFSC with the power to apply monetary fines.

Preventive Measures—Designated Non-Financial Businesses and Professions

23. CDD obligations for DNFBPs are largely the same as for financial institutions. Trust company business is defined as a “financial service business” and has been supervised with increasing rigor by the JFSC since it was first brought within its ambit in 2000. As a strong proponent of international regulation of trust businesses, Jersey has been to the fore in seeking to develop international standards in this area and to implement effective measures domestically. As trust and corporate-related business may represent the highest overall reputational risk to Jersey’s financial services sector, it is important that the close monitoring is continued.

24. With the extension in the scope of AML/CFT requirements in 2008 to include the remaining DNFBPs, Jersey is well placed to achieve full compliance with the international standard. Lawyers and (to a lesser extent) accountants in Jersey are heavily engaged in providing trust, investment, and wealth-management services, mainly to nonresident clients and have been subject to prudential oversight in respect of these activities for some time. However, as they (in respect of auditing, accounting, and legal services) and other DNFBPs (estate agents, high value dealers) have only recently become subject to AML/CFT oversight in respect of DNFBP activities, the effectiveness of implementation could not be fully tested at the time of the assessment. The JFSC has established an AML unit to address the new areas of responsibility. While it is too soon to fully assess the unit’s effectiveness, initial progress appears positive and additional resources might be warranted as the work expands. There are no casinos in Jersey, though, as a result of a recent change in the law, some support services could be based there in future.

Legal Persons and Arrangements and Non-Profit Organizations

25. Company registration and the establishment of trusts are significant activities in Jersey and are subject to strong AML/CFT requirements. Jersey law allows for the incorporation of public and private companies and limited liability partnerships (LLPs), subject to registration with the Registrar of Companies. Close to 34,000 companies were registered at the time of the assessment, a large majority being private companies. All information from the companies' register is publicly available, including online. Pursuant to the Control of Borrowing (Jersey) Order 1958 (COBO), beneficial ownership information must be provided to the JFSC in respect of all registered companies. This information is not publicly available but may be accessed by court order. In addition, Jersey requires its TCBs to obtain, verify, and retain beneficial ownership information on client legal entities and the JFSC monitors compliance with this requirement.

26. Jersey trusts, which are widely used, are legal arrangements governed by the Trusts (Jersey) Law 1984. They are highly flexible and allow for the settlor to maintain, through a range of available mechanisms, significant influence over the trust property. Although there is no requirement for all trusts to be registered or to file information with a central authority, Jersey requires its TCBs to obtain, verify, and retain beneficial ownership information on client legal arrangements and the JFSC monitors compliance with this requirement. The JFSC has a wide range of powers to access any information and documentation held by registered TCBs and may require the production of information, the provision of answers to questions posed, and access to the premises of the supervised person. No statistics are maintained on the number of Jersey trust arrangements or the volume of trust assets administered in Jersey.

27. Non-profit organizations became subject from August 2008 to a requirement under the Non-Profit Organizations (Jersey) Law 2008 to register with the JFSC. Following the closing of the registration period in November 2008, the authorities should proceed to analyze the sector to seek to identify any FT vulnerability.

National and International Cooperation

28. The legal framework for mutual legal assistance (MLA) and extradition is largely in place and effective. More than 70 percent of MLA requests received were granted within three months. However, where dual criminality is required, the technical deficiencies in the ML and FT offenses may limit somewhat Jersey's ability to provide MLA, including in extradition cases.

29. The Jersey authorities established in 2007 an AML/CFT Strategy Group to coordinate policy in implementing the FATF Recommendations. Day-to-day cooperation between the domestic authorities is close and effective. Formal gateways are in place to facilitate exchange of information.

30. At the international level, the JFCU is an active member of the Egmont Group and frequently exchanges information with other financial intelligence units. The JFSC is active in international cooperation and shares information subject to appropriate safeguards. There is no statutory banking secrecy provision and information sharing is subject to the common law duty of client confidentiality.

31. While an assessment of taxation matters is not within the scope of this assessment, it is worth noting that Jersey has been among the pioneers of Tax Information Exchange Agreements (TIEAs).

Jersey voluntarily applies measures equivalent to the EU Savings Tax Directive offering the option of using the retention tax approach. While tax evasion is not a separate statutory offense under Jersey law, such conduct could be (and has been) prosecuted as “serious fraud” and as such, constitutes a predicate offense for money laundering.

Other Issues

32. The level of resources allocated to AML/CFT matters appeared generally adequate, taking into account the decision by the authorities to approve additional resources for the JFCU. The AG and JFSC are in a position to acquire additional legal expertise on contract to handle increases in case-load. The resources of the JFSC may need to be increased somewhat to adequately cover its expanded areas of AML/CFT responsibility, while maintaining the level of AML/CFT supervision of financial institutions and TCBs.

33. Relevant statistics are generally available and well maintained, though the JFCU would need to develop its statistical collection system to demonstrate what action results from submitted SARs, particularly as its workload increases.

1. GENERAL

1.1. General Information on Jersey

34. Located 14 miles (22.5 kilometers) off the north-west coast of France and 85 miles (137 kilometers) from the English coast, Jersey is an island with a total surface area of 45 square miles. The resident population was officially estimated at end-2007 at 90,800 and has remained relatively stable in recent years. Persons wishing to buy and occupy property in Jersey must meet certain legislative criteria to become “residentially qualified” and 85 percent of the population has become so qualified through a period of residence (10 years for persons born locally; 12 years continuous residence for someone born outside Jersey).

35. Jersey is a self-governing British Crown Dependency. It is not part of the U.K. and is not represented in the U.K. Parliament. The U.K. Government is responsible for Jersey’s international affairs and defense, while Jersey has autonomy in relation to its domestic affairs, including taxation. The U.K. parliament does not legislate for Jersey without its permission: by a Framework Agreement, the U.K. will not act internationally on Jersey’s behalf without prior consultation. With such agreement, Jersey has been included in many international conventions to which the U.K. is a party. Under the terms of Protocol 3 to the U.K.’s 1973 Treaty of Accession, Jersey has a relationship with the European Union (EU) and is part of the common customs territory of the European Community, allowing for free movement of goods and trade with EU member states. However, Jersey is not part of the EU single market in financial services and the relevant EU Directives do not apply. However, in many cases, similar requirements have been put in place in implementing international standards for regulation and in the AML/CFT area. The local currency is the Jersey pound, which is on a par with the British pound (GBP). There are no exchange controls.

36. Jersey is a parliamentary democracy and its single-chamber parliament is called the Assembly of the States of Jersey (the States), which comprises a number of categories of elected representative and holders of certain positions ex officio—only elected members have the right to vote. The constitution of the States and its procedures are set out in the States of Jersey Law and related Standing Orders. The Executive of the States is the Council of Ministers, consisting of a Chief Minister and nine ministers, each with political responsibility for a civil service department. There are detailed and well developed mechanisms in place to support accountability and high standards of governance.

37. The Jersey economy has performed satisfactorily over the last decade, but some slowdown is currently expected in the context of global financial turmoil and the slowing of the British economy. Annual real gross value added (GVA) growth averaged 3.8 percent over 2003–07. GVA in 2007 is estimated at GBP4.1 billion. Gross national income (GNI), which measures income of Jersey residents and companies, is estimated at GBP3.7 billion. GNI per head is about GBP41,000 (44 percent more than in the U.K.).

38. Jersey has its own legal system and jurisprudence, which is a mixture of customary law and statute law. English law does not apply but the criminal law draws heavily on English common law in some areas and, where the statutory provisions are modeled on English Acts of Parliament, English cases are frequently referenced by the Royal Court of Jersey. However, in certain areas, Jersey has adopted laws to meet its own special circumstances.

39. No particular structural issues were identified in the course of the assessment that could give rise to an increased vulnerability to abuse of the system for ML or FT purposes. Standards of governance and transparency appear to be high. In the area of anti-corruption, Jersey has enacted the Corruption (Jersey) Law 2006 containing a comprehensive range of relevant offenses. Jersey has requested the U.K. to ratify on its behalf the UN Convention against Corruption, the Council of Europe's Criminal Law Convention on Corruption, and the OECD's Convention on Combating Bribery of Foreign Public Officials in International Transactions. The court system appears to be effective, including in cases directly relevant to money laundering, and indications point to high ethical and professional standards across the public sector. The assessors can confirm that they found a significant improvement in the overall culture of compliance across the financial sector by comparison with the more accommodating pre-2003 approach, as emphasized by many of the financial sector participants. Most legal and accounting professionals are members of professional bodies which carry out monitoring procedures for quality control and legal compliance and, as described later in this report, progress is currently being made regarding the implementation of AML/CFT measures by lawyers and accountants.

1.2. General Situation of Money Laundering and Financing of Terrorism

40. Jersey is, in general, a low-crime environment, though the authorities have a continuing concern regarding the increasing incidence of drug related crimes. Illegal drugs—heroin in particular—commands a very high price in Jersey relative to other jurisdictions, making it attractive for criminals to attempt to provide supplies to meet local demand. The customs and law enforcement authorities devote considerable resources to countering drug importation and related crime. On average over the past five years, approximately 10 percent of suspicious activity reports filed with the FIU were drug-crime related.

41. The authorities also identified that a significant component of suspicious reporting related to the proceeds of (mainly) foreign fraud and corruption, including in relation to nonresident politically exposed persons. The proceeds of foreign insider trading also featured.

42. More broadly, as discussed in detail in this assessment, the nature of the financial sector business conducted in or from Jersey creates a material vulnerability to being used in the layering and integration stages of money laundering schemes. As set out below, some characteristics of the Jersey financial system point to an elevated vulnerability to abuse for ML or FT purposes. While in reality not all of this business is high-risk, much of it would fall within the range of categories suggested by the FATF Methodology as examples of higher-risk business, including as follows:

- A substantial proportion—believed to be around 90 percent in some sectors—of customer relationships and of financial services business conducted are on a non face-to-face basis for nonresidents of Jersey;
- In many cases the business relationship is established through intermediaries or introducers (Jersey or foreign) that are subject to varying levels of regulation, depending on their origin. Subject to certain legal requirements, Jersey financial institutions are permitted to rely on the intermediaries or introducers to conduct CDD on their behalf. However, in general the CDD evidence is independently checked and CDD tests sometimes conducted again by the Jersey financial institution, employing a risk-based approach;

- Financial services provided include private banking facilities for nonresidents; and
- The use of legal persons and arrangements such as trusts is prevalent, both as asset-holding vehicles and as part of more complex structures that have the potential to create difficulties for Jersey financial institutions on occasion in accurately identifying the customer and the ultimate beneficial owner or controller.

43. This environment, designed to attract financial services business and employment to Jersey, brings with it a material risk of financial crime, typically emanating from other jurisdictions and seeking to avail of the financial services available in Jersey. This assessment will consider carefully whether and to what extent the preventive measures put in place in Jersey are adequate to measure, manage, and mitigate the resulting risk. Emphasis will also be placed on assessing the willingness of the Jersey authorities to cooperate with their international counterparts in addressing cross-border financial crime, and in assessing the effectiveness of the measures in place.

44. While the number of suspicious reports in relation to the financing of terrorism has been relatively low, the authorities report that the resulting investigations have been significant, involving close cooperation with the U.K.. There have been no convictions or prosecutions in Jersey for terrorist financing; neither have there been any domestic terrorist incidents.

1.3. Overview of the Financial Sector

45. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9. It is evident that the banking and funds sectors dominate, while insurance business is not conducted on a significant scale from Jersey. All categories of financial institution are authorized and supervised, including for AML/CFT purposes, by the JFSC.

Statistical Table: Structure of Financial Sector–Financial Activity by Type of Financial Institution

1. Jersey–Financial Activity by Type of Financial Institution–December 31, 2008

Product/ activities regulated and supervised	Financial institution activities conducted	Numbers registered	Size of sector
Recognized fund Functionaries and certificate holders	Participation in securities issues and provision of services related to such issues	10 Recognized funds 1,472 certificate holders	Total net asset value – £2.4 billion. Total net asset value of £241 billion
Deposit-taking	Acceptance of deposits Lending Transfer of money or value Issuing and managing means of payment Financial guarantees and commitments Trading in investments Money and currency changing	47	Deposits - £206 billion.

Insurance business	Underwriting and placement of life insurance and other investment related insurance	186	Less than 1 percent of assets of the financial system.
Investment business	Individual and collective portfolio management Otherwise investing, administering or managing funds or money on behalf of other persons	113	Assets under administration - £18.8 billion.
Money service business	Transfer of money or value Money and currency changing	50	Relatively small
Fund services business	Participation in securities issues and provision of services related to such issues	514	

Overview of the Money Service Business

46. The independent money services sector in Jersey is small. Bureau de Change services are offered by offices of major travel agencies and by the Jersey Post. Some hotels have until recently offered limited exchange services but, with the prospect of new regulation, most have curtailed this activity to avoid the threshold for regulation. Bureaux de Change typically deal with the public and for transactions that are well within the EUR15,000 threshold of Recommendation 5. They do not customarily handle exchange transactions for retail or commercial clients. Other than through banks, money transmission services are provided by agents of Western Union and MoneyGram. Jersey Post offers MoneyGram services but does not otherwise provide postal money transmission services. Outbound transmissions dominate, with a major portion of the business being remittances to Poland, Madeira, and Latvia by ethnic groups working in the Jersey service sector.

47. The authorities and the money service sector are not aware of any hawala-style remittance arrangements operating in Jersey.

1.4. Overview of the DNFBP Sector

48. As set out in detail in section 4 of this report, the JFSC's supervisory responsibilities were in the course of being extended at the time of the on-site visit to include not just Trust Company Businesses (TCB) (which have been regulated and supervised for a number of years) but also the supervision for AML/CFT purposes of the other categories of Jersey's DNFBPs. The number of businesses in each category is set out in the following table.

2. Jersey–Designated Non-Financial Businesses and Professions–December 31, 2008		
Schedule 2 activity	Category of DNFBP	Estimated Numbers (Source: JFSC)
Business of providing services by independent legal professionals	Lawyers, notaries, and other independent legal professionals	27
Business of providing external accountancy services, tax advice, audit services, and insolvency services	Accountants	25

Business of providing estate agency services concerning the buying or selling of property	Real estate agents	15
Services provided by high value dealers	Dealers in precious metals Dealers in precious stones	Nil (none registered at end-December 2008)
Business of operating a casino	Casinos	Nil
Trust company business	Trust and company service providers which, as a business, provide a service to a third party	186 affiliation leaders (actual) 889 affiliation leaders and participating members (actual) No estimates are available for assets held by Jersey trusts, but they are understood to be very substantial.

Trust and Company Service Providers

49. As defined in the Financial Services Jersey Law 1998 (FSJL), the trust company business in Jersey encompasses any person that carries on a business that involves the provision of company administration services, or trustee or fiduciary services and who also carries on a prescribed activity. The trust company business sector is a large and integral part of the financial sector. According to the JFSC, 186 entities are registered to carry on the trust company business, some of which are registered to undertake a range of TCB activities. Employment in the TCB sector is estimated to be about 5,000. TCBs vary widely in the range of services and products they offer, in their size and in their corporate structure. A handful of very large TCBs are affiliates of Jersey law firms, and a few are affiliates of banks. More commonly, TCBs are unaffiliated Jersey companies, many of which have offices in other jurisdictions. The majority of employment in the sector is accounted for by bank affiliated TCBs.

50. The business lines of TCBs are typically categorized as company and trust administration, private wealth management for high (and ultra high) net worth clients, formation and administration of structured finance products, and employee benefit solutions. Firms typically specialize along product and service lines, and according to the geographic source of business. While the U.K. accounts for a large share of TCB clients, the client base is widely distributed across Europe, the Middle East, Latin America and Africa, and, to a lesser extent, Asia. Private client work is the core activity of much of the TCB sector but work for corporate clients has grown rapidly in recent years, particularly in the area of pension and employee benefit structures.

Lawyers

51. The legal profession in Jersey consists of advocates, who have a right of audience before all Jersey Courts, and solicitors, who have a right of audience in the Petty Debts Court. Educational as well as other admission requirements for both categories are provided for in the Advocates and Solicitors (Jersey) Law 1997. In addition, lawyers admitted under the law of a foreign jurisdiction may operate in Jersey, albeit they may not practice Jersey law. While a limited number of notaries are

active in Jersey, they do not handle or provide services in respect of any property transactions. To become a notary under Jersey law, an individual must pass the notaries examination.

52. Jersey lawyers provide a wide range of legal services, including litigation, corporate and commercial law, real estate law, will and estate planning, and representation before the courts in criminal and civil cases. Many law firms also provide trust and company services, albeit through a legal entity that is separate from the law firm and is licensed as a TSCP. At the time of the assessment visit, the Jersey legal profession consisted of 350 members, of whom 25 percent were solicitors and 75 percent advocates. In addition, 200–250 lawyers qualified under a foreign jurisdiction, in particular the UK, and around 30 notaries, were operating in Jersey.

Accountants

53. Approximately 42 firms in Jersey offer accountancy services, including offices of the Big Four and a range of smaller local firms and sole practitioners. Larger firms provide audit, tax, insolvency, and advisory services, with audit work for multi-national financial institutions representing a large share of their work. A significant number of accountants work for Jersey trust companies. In some cases local accounting practices include a trust company. However, audit firms with a large international client base tend to avoid direct involvement in the trust business due to potential customer conflicts. Advisory work for both corporate and private clients can be a significant avenue of business development for Jersey trust companies.

54. The Jersey Society of Chartered and Certified Accountants (JSCCA) is a professional association representing the interests of its membership. However, there is no professional body of accountants established in Jersey that could issue its own code of ethics or set standards, certify qualifications, or discipline members. Many in the profession are members of the Institute of Chartered Accountants of England and Wales or similar professional bodies and come under the disciplinary framework of those bodies.

55. With the coming into force of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (SBL) in September 2008, Jersey accountants as defined in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 (POCL), are subject to regulation by the JFSC for compliance with AML/CFT obligations. As of October 28, 2008, some 22 persons had requested registration. Application for registration extended through December 19, 2008, at which date 25 accountancy firms had registered.

Real Estate Agents

56. The main activities conducted by Jersey estate agents concern local and overseas property transactions and lettings. Jersey has adopted the FATF definition of estate agents which covers the buying and selling of real estate. In Jersey, conveyancing is always handled by a Jersey lawyer and no movements of funds are conducted by estate agents. The estate agency business is tiered, with three large firms accounting for about two thirds of the total business, ten or twelve mid-size firms competing actively for business, around a dozen mid-sized firms competing actively for business and around 20 small offices (some small traders) conducting limited business. At December 31, 2008, 15 estate agents had registered with the JFSC, with the remainder registering in 2009. A feature of the local residential property market is that ownership and occupancy are very tightly controlled because of the scarcity of space. All property conveyances require housing consent and must be recorded and

approved and registered by the Royal Court. Consent and approval involve careful scrutiny of an individual's identity, employment, and residency.

Dealers in Precious Metals and Precious Stones

57. In Jersey, the DNFBP categories of dealers in precious metals and dealers in precious stones consists of about a dozen long-established jewelry stores. The client base includes a significant proportion of international visitors who are attracted to the availability of high quality products and international brands at low-tax prices. High value sales paid for using debit and credit cards are not uncommon.

58. Jersey has taken the approach of bringing all high value dealers, not just jewelers, under the AML/CFT regime. With effect from September 2008, all high value dealers who are prepared to accept cash payment of EUR15,000 or more are subject to the Money Laundering (Jersey) Order 2008 (MLO) and are required under the Proceeds of Crime (Supervisory Bodies) (Designation of Supervisory Bodies) (Jersey) Order 2008 (SBO) to register with the JFSC. According to the JFSC, prior to introduction of the new requirements high value cash purchases of EUR15,000 were not common but they were noticeable among dealers in automobiles, jewelry, and yachts, and occasionally at hotels. Prior to formal introduction of the new regulatory requirements, some dealers indicated to the JFSC they might wish to register to be allowed to accept high value cash payments. With the August publication of the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Estate Agents and Dealers in High-Value Goods (Handbook for Estate Agents and Dealers in High-Value Goods), however, most of these dealers have revised their plans and have instead told the JFSC that they will cease accepting cash payments of EUR15,000 or more. To date, no dealers have registered with the JFSC to be dealers in high value goods.

Casinos

59. Under the general prohibition of the Gambling (Jersey) Law 1964, as amended, casino gaming is illegal in Jersey, though it is possible for such business to be carried on outside Jersey by Jersey companies. Notwithstanding this prohibition, if casino gaming were to be legalized, the AML/CFT framework for DNFBPs would apply to casinos, as it applies to any gaming activities carried on outside Jersey by Jersey companies. Under Schedule 2 of the POCL "the business of operating a casino" is an activity subject to the MLO. Articles 4 and 13 of the MLO provides that identification procedures must apply to any transaction amounting to not less than EUR3,000 carried out in the course of operating a casino. This is in addition to identification measures that must apply where any business relationship is formed.

60. While casino gaming is illegal in Jersey, the Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 2008 (Gambling Regulations) allow remote gambling operators to locate servers for online gambling activities (which could include casino gaming) in Jersey, but only as part of the provision for business continuity in cases of a verified disaster in their home jurisdiction. The Gambling Regulations require both gambling operators and local hosting facility providers to be licensed. Regulation 25 of the Gambling Regulations provides that it shall be a condition of a remote gambling facility provider's license that the holder of the license and his or her employees or agents shall comply with the laws of Jersey relating to money laundering, drug trafficking, data protection, and terrorist financing. This allows both regulatory and criminal action to be taken where there is a failure to comply with the law.

61. The JFSC is not aware of any Jersey companies carrying on the business of operating a casino outside Jersey. At the time of the on-site visit, only one application for a remote gambling facility provider had been received (hosting) and is currently subject to due diligence checks by the Economic Development Department.

1.5. Overview of commercial laws and mechanisms governing legal persons and arrangements

Companies and Partnerships

62. Jersey companies are governed by the Companies (Jersey) Law 1991 (CL), which allows for the incorporation of public and private companies. While it is generally up to the members to decide whether a company shall be a private or a public company, companies that circulate a prospectus relating to their own securities or with more than 30 shareholders are in any case treated under the CL as public companies. As such, they have to have annual shareholder meetings, subject to members agreeing in writing to dispense with such meeting, and submit audited accounts and details of directors to the Registrar of Companies.

63. The shareholders of a public or private company may have limited or unlimited liability. A company may be formed as a par value or a non par value company, or as a guarantee company if it only consists of guarantor shareholders. A company may also be set up as a limited life company, if its memorandum provides for its winding up and dissolution upon the happening of a specified event or upon expiration of a fixed period of time. Any company may be incorporated as a cell company.

64. In addition to companies established pursuant to the CL, Jersey law allows for the registration, of Limited Liability Partnerships (LLP) pursuant to the Limited Liability Partnerships (Jersey) Law 1997, and of Limited Partnerships (LP) pursuant to the Limited Partnership (Jersey) Law 1994. General partnerships also operate in Jersey based on customary law. None of these partnerships is considered a body corporate and only the LLP has legal personality. LPs and general partnerships are considered legal arrangements. Of the later two, only limited partnerships are registered with the Registrar of Limited Partnerships.

65. Jersey companies, LPs, and LLPs are set up by way of registration with the Registrar of Companies. To incorporate a company and thus obtain legal personality, the memorandum and, if applicable, the articles of association as well as a statement containing the address of the registered office in Jersey and, in the case of a public company, the particulars of the company director(s) has to be provided to the Registrar. For LLPs, the Registrar has to be provided with a declaration, stating the name of the partnership, the address of the registered office and the name and address of each partner.

66. Public companies require at least two shareholders and two directors. Private companies have to have at least one shareholder and one director. All companies require a registered office in Jersey and one secretary. A company may only act as a director of a Jersey company if it is registered to conduct such activity pursuant to the FSJL and has itself no corporate director. The company secretary may be the same natural or legal person as the company director, unless he/she is a sole director. LLPs require a registered office but no secretary. All information and documentation provided to the Registrar pursuant to the CL is public information and available to any person, including online.

67. In addition to information that is collected by the Registrar under the CL and partnership laws, the JFSC obtains and administers beneficial ownership information pursuant to the relevant

provisions of the Control of Borrowing (Jersey) Order 1958 (COBO) as outlined in greater detail under Recommendation 33. Information held by the JFSC pursuant to the COBO is not publicly available but may be disseminated by the JFSC to other supervisory agencies pursuant to Article 36 FSJL or accessed on the basis of a court order.

68. In addition to beneficial ownership information obtained by the JFSC, registered trust and company service providers are required under the MLO to obtain, verify, and retain beneficial ownership information on legal persons, and Article 8 of the SBL (and equivalent provisions in other laws) grants the JFSC a wide range of investigative powers to access any information and documentation held by such persons. Law enforcement authorities may apply for a court order to access any information and documentation held by TCBs.

69. As of December 31, 2008, 33,395 companies were registered in Jersey, of which 32,081 were private companies and 1,314 were public companies. Included in the total are 570 cell companies.

Trusts

70. Trusts constitute an important part of and are widely used in the Jersey financial services industry. Such legal arrangements are governed by the Trusts (Jersey) Law 1984 (Trusts Law) or, in the case of foreign trusts, by trusts laws from other jurisdictions. The Trusts Law does not require the use of a Jersey registered TCB in administering a Jersey trust, nor is there a registration requirement for trusts. In addition to the Trusts Law, the English law principles of trust law and equity are applied and recognized by the courts in Jersey insofar as they are not contrary to statutory law or local precedent.

71. A trust under Jersey law is a legal arrangement whereby a person (settlor) transfers assets or property to another (trustee), who holds legal title to those assets not in his own right but (1) for the benefit of another whether or not yet ascertained or in existence or (2) for any purpose which is not for the benefit only of the trustee or (3) for both. Jersey trusts are generally set up by way of deed, declaration or will, even though the Trusts Law allows for a trust to be created in any manner, including through oral declaration.

72. Jersey trusts are highly flexible and allow for the settlor to maintain a wide range of direct powers over the management and administration of the trust property. Jersey law allows for both the settlor and the trustee to be a trust beneficiary, including the sole beneficiary. The settlor may reserve an extremely wide range of powers with respect to the trust, including to amend or revoke the trust terms, to give binding instructions with respect to management of the trust property, to appoint or remove trustees, beneficiaries, enforcers, and protectors, to change the law of the trust, and to restrict any powers or discretion of the trustee through requiring consent of the settlor or any third person before any action may be taken.

73. Protectors, enforcers, as well as flee clauses are allowed under Jersey law, although the latter seems to be used only to a very limited extent. The Convention on the Law Applicable to Trusts and on their Recognition has been extended to Jersey and Jersey law recognizes foreign trusts through Article 3 of the Trusts Law.

74. The authorities do not maintain statistics or information pertaining to the number of trust arrangements or the amount of trust assets administered in Jersey.

Non Profit Organizations

75. Jersey does not yet have a body that is charged with the oversight of charities. On June 5, 2008, the States approved the Non Profit Organizations (Jersey) Law 2008 (NPO Law), which provides for non-profit organizations (NPOs) to register with the JFSC, and registration started on August 8, 2008. Following completion of registration of NPOs in December 2008, information on the number of NPOs (with breakdowns by size), form of NPOs (with numbers of entities in each category), estimated financial flows through the sector, and details of NPOs with international ties will be available for analysis.

76. It is already known that the Association of Jersey Charities has just over 200 members, that the Comptroller of Income Tax is aware of some 1,000 charities that have historically enjoyed tax exempt status, and that the Economic Development Department, which regulates gambling in Jersey, issues around 200 permits each year to charities, associations and clubs to run lotteries and bingo events on a noncommercial basis.

1.6. Overview of strategy to prevent money laundering and terrorist financing

AML/CFT Strategies and Priorities

77. Jersey has established an AML/CFT Strategy Group to coordinate AML/CFT efforts and which, in October 2008, published “An Island Strategy to Counter Money Laundering and the Financing of Terrorism” (see [JFSC website](#)). The Strategy Group includes representatives of all of the authorities with an AML/CFT role. It is chaired by the Chief Executive of the States and comprises the Chief Minister’s Department, the Economic Development Department, the Law Officers’ Department, the JFSC, the JFCU, and the Shadow Gambling Commission. The strategy document outlines the significance of AML/CFT measures to Jersey and the roles and commitment of the authorities in implementing them in line with international standards. It discusses key AML/CFT vulnerabilities for Jersey and sets out the basis on which the Strategy Group will coordinate efforts to address them, including through an annual review process. The document points out that, although this was the first time that such vulnerabilities were formally documented in this way, Jersey has been proactive over recent years in identifying ML and FT vulnerabilities, including through the progressive application of AML/CFT requirements to the trust sector from 1999 onwards.

78. Topics and vulnerabilities of strategic interest outlined in the October 2008 document include dealing with requests for assistance regarding assets in Jersey linked to insider dealing and market manipulation abroad, consideration of introducing a basis for civil confiscation, and the expansion of AML/CFT coverage to additional relevant businesses, including to lawyers and accountants.

79. The strategy document sets out three goals:

- Raise awareness of obligations that are set out in legislation and Codes of Practice in those sectors considered to have lower awareness;
- Raise awareness of typologies that are relevant to Jersey including the risks arising from the nature of the customer base and products associated with Jersey as an international finance centre;

- Raise awareness of the importance of considering the competence and probity of employees at the time of recruitment and on an ongoing basis thereafter.

80. It also outlines work in progress in a number of areas:

- Develop a picture of the size and nature of the NPO sector, for which CFT-related legislation came into force on August 8, 2008, and the risks that may be presented. Identify NPOs that may be more vulnerable to use in terrorist financing, and work with such NPOs to reduce that vulnerability;
- Preparation for the application by States of Jersey Customs and Immigration Service (Customs) officers of controls on carrying cross-border cash in excess of EUR10,000, and the planned implementation of Special Recommendation IX.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

81. Overall political responsibility for Jersey's legislative and regulatory strategy to counter money laundering and terrorist financing rests with the Chief Minister. The Chief Minister is assisted in this area by an AML/CFT Strategy Group. The Minister for Home Affairs is responsible for the States of Jersey Police (Police) and Customs. The JFSC is accountable to the States through the Minister for Economic Development, including as regards the JFSC's role in overseeing NPOs that raise and disburse funds in Jersey. The Minister for Treasury and Resources is responsible for the requirements that are placed on persons carrying on financial services business by the MLO and determining which persons are covered by those requirements (through Schedule 2 of the POCL).

Joint Financial Crime Unit (JFCU)

82. The JFCU is responsible for collection, analysis and dissemination of intelligence that is collected under reports made under AML/CFT legislation, and is a partnership between the Police and Customs. Along with the Law Officers' Department, the JFCU conducts money laundering and terrorist financing investigations.

Attorney General / Law Officers' Department

83. The Attorney General (AG), a Crown appointment, is head of the Law Officers' Department, Jersey's prosecution service, and is also the legal adviser to the Crown and the States (and its Ministers and Departments). The Law Officers and the JFCU work closely together not only in relation to this sharing of intelligence but also in identifying cases for investigation, the investigations themselves and in sharing information relevant to mutual legal assistance requests.

Customs and Excise

84. The Customs Service has responsibility for policing Jersey's border and also provides the three officers that sit within the drugs proceeds confiscation wing of the JFCU - which has responsibility for financial investigations relating to drug trafficking in Jersey. The Service is responsible for seizing illicit drugs and 'tainted cash' (as defined in the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008) (POC (CS) L)) and is able to require cash disclosures from individuals entering and leaving Jersey (as of January 2009).

Jersey Financial Services Commission (JFSC)

85. The JFSC is an independent statutory body with responsibility for the registration and prudential oversight of banks, insurance companies, fund services businesses, investment businesses (investment managers, dealers and advisors), trust company businesses (trust and company service providers), general insurance mediation businesses, money service businesses, and fund products. It has responsibility for the oversight for compliance of the above sectors with AML/CFT requirements, as well as for checking that financial institutions have effective systems and procedures in place to comply with the implementation in Jersey of United Nations (UN) and EU sanctions legislation. The JFSC issues and maintains the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws (Handbook for Regulated Businesses) which sets regulatory requirements and provides guidance to prudentially supervised persons. The JFSC also operates Jersey's Companies Registry (covering companies, LPs and LLPs) and administers the Control of Borrowing (Jersey) Law 1947. The JFSC's AML/CFT oversight remit has been extended to cover other persons that carry on financial services business and which are not prudentially supervised persons, through enactment in July 2008 of the SBL. It is now also responsible for registering NPOs under the NPO Law which came into force in August 2008.

86. Jersey has formed a "shadow" Gambling Control Commission, which is charged with the development of legislation to extend and regulate gambling activities. Legislation does not permit casinos to operate in Jersey.

Approach Concerning Risk

87. Jersey has adopted the risk-based approach to AML/CFT at all levels—in determining at the margins the scope of coverage of the AML/CFT requirements; in the direction given to industry to take risk into account in designing and applying appropriate CDD measures; and in the supervisory approach of the JFSC. The risk-based approach appears to be taken seriously in Jersey and awareness is exceptionally high on the part of both the authorities and the financial sector of the need to assess inherent risk and apply enhanced CDD measures where warranted. The JFSC has provided guidance on the proper implementation of the risk-based approach in Sections 2 and 3 of their Handbook for Regulated Businesses (and the handbooks for other sectors)—the former dealing with the assessment and management of risk at business level, and the latter with the application of a risk-based approach on a customer by customer basis. The JFSC expects each financial institution to develop a risk-based AML/CFT strategy and has been testing implementation as part of focused on-site examinations. At this relatively early stage, results have been shown to be mixed and it is not uncommon for institutions to be instructed by the JFSC to further develop their risk analysis and models.

88. At the broader policy level, the risk-based approach is also evident in the work of the AML/CFT Strategy Group, as described above, which is considering on an ongoing basis the vulnerabilities and sources of risk to which the Jersey financial sector is exposed. Overall, the assessors commend the Jersey authorities for their professional approach to the implementation of effective risk-based AML/CFT measures, including placing particular emphasis on training and awareness-raising, focusing primarily on enhancing due diligence in areas of perceived higher risk, and delivering a program of on-site internal controls and external supervision to test the quality of implementation. While much work remains to fully achieve effective implementation across all

entities subject to AML/CFT requirements, impressive progress has been made to date, due to the strong commitment of both public sector and financial sector participants.

Progress Since the Last IMF Assessment

89. The AML/CFT measures in Jersey were last assessed by the IMF in 2002 (report published in 2003). The authorities published an action plan to address the recommendations made at that time, most of which have since been addressed in whole or in part. To an extent, the recommendations have been overtaken by the substantive revisions to the FATF Recommendations in 2003, which form the basis for the current assessment. However, a number of points are carried forward from the 2002 assessment and are included again among the recommendations in this report. For example:

- Extension of the U.K.'s ratification of the Convention against Transnational Organised Crime to include Jersey is still awaiting action in the U.K.; and
- While substantive action was taken, some issues remain regarding the effectiveness of the obligation to report suspicious activities.

90. Broadly speaking, however, Jersey has made substantial progress in addressing the recommendations of the 2002 assessment, in the context of addressing also the latest revision to the FATF Recommendations.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1. Criminalization of Money Laundering (R.1 & 2)

2.1.1. Description and Analysis

Legal Framework:

91. Jersey has criminalized money laundering through the POCL, the Drug Trafficking Offences (Jersey) Law 1988 (DTOL), and the Terrorism (Jersey) Law 2002 (TL). Whereas the offense defined in the POCL covers money laundering related to all predicate offenses, the DTOL and the TL are limited in scope to predicate offenses involving drug trafficking and terrorism, respectively.

Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):

92. As a Crown Dependency, Jersey is not a sovereign State and can therefore not sign or ratify international conventions in its own right. Rather, the United Kingdom (U.K.) is responsible for Jersey's international affairs and, following a request by the Jersey Government, it may arrange for the ratification of any convention to be extended to Jersey.

93. The U.K.'s ratification of the Vienna Convention has been extended to Jersey on July 7, 1998. While Jersey has requested extension of the Palermo Convention on July 2, 2008, at the time of the onsite visit the U.K. had not yet granted the extension.

94. As indicated above, Jersey's money laundering offenses are defined through three different acts: the POCL, the DTOL, and the TL. Whereas the offenses contained in the POCL and DTOL vary only in terms of scope but not with respect to the material elements, the TL's money laundering offense is different also in terms of language and will therefore be discussed separately.

POCL and DTOL:

95. The money laundering offenses of the POCL extend to all offenses sanctioned with imprisonment for a term of one year or more, except drug trafficking offenses and offenses under the TL. In comparison, the money laundering offenses of the DTOL only relate to certain offenses defined in the Misuse of Drugs (Jersey) Law 1978 and the Customs and Excise (Jersey) Law 1999.

96. Articles 34 POCL and 30 of the DTOL provide that a person is guilty of money laundering if he (1) conceals or disguises any property that is, or in whole or in part directly or indirectly represents, the person's proceeds of criminal conduct/drug trafficking or converts or transfers that property or removes it from the jurisdiction for the purpose of avoiding prosecution for an offense or if the person (2) knows or has reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents another person's proceeds from criminal conduct/drug trafficking and conceals or disguises that property or converts or transfers that property or removes it from the jurisdiction for the purpose of assisting any person to avoid prosecution for an offense/a drug trafficking offense. Articles 34(3) and 30(3), respectively, further state that the reference to concealing or disguising any property include references to concealing or disguising the nature, source, location, disposition, movement, or ownership or any rights with respect to it.

97. Articles 34 of the POCL and 30 of the DTOL provide criminal liability for the acts of “concealing or disguising” and the “converting or transferring” only if the prosecution can show that the purpose of the act is to avoid prosecution for a predicate offense. In comparison, the offenses of “conversion or transfer of criminal proceeds” as defined in the Palermo and Vienna Conventions are broader and require proof that the purpose of the act is either to conceal or disguise the illicit origin of the property or to help any person to evade criminal liability for the predicate offense. In addition, under the Vienna and Palermo Conventions, no specific purpose has to be proven for the “concealment or disguise” of the true nature, source, location, disposition, movement, or ownership of or rights with respect to criminal proceeds. Therefore, Articles 34 of the POCL and 30 of the DTOL are not sufficiently wide to meet fully the international standard due to the requirement to prove the outlined purpose in all cases.

98. While certain situations in which a purpose cannot be proven by the Jersey prosecutor could be covered by the offense of “assisting another to retain the benefit” of the commission of a predicate offense, the latter offense does not extend to self-laundering as outlined below and also requires proof of the existence of an “arrangement.”

99. Articles 33 of the POCL and 38 of the DTOL provide that “a person is guilty of an offense if, knowing that any property is, or in whole or in part directly or indirectly represents another person’s proceeds of criminal conduct/drug trafficking, he acquires or uses that property or has possession of it”, whereby it is expressly stated that “having possession of any property shall be taken to be doing an act in relation to it.” Articles 33(2) and 38 (2), respectively, further provide that it is a defense to a charge if a person acquired or used the property or had possession of it for adequate consideration, whereby he/she “acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property” and “uses or has possession of property for inadequate consideration if the value of the property is significantly less than the value of the person’s use or possession of the property.” The exception, although a defense for situations in which adequate consideration was provided, is beyond the standard as set forth in the Vienna and Palermo Conventions.

100. Jersey law requires that the prosecution has the burden of proving its case to the criminal standard. Occasionally, a statute provides for a reverse burden of proof, placed on the defendant, where a specific defense is conferred by the law. In those circumstances, the statute may provide that if a defendant can prove the elements of a defense to the civil standard which is by a preponderance of evidence, he/she has a right to acquittal. This is a concern with respect to Articles 33(2) of the POCL and 38(2) of the DTOL as it is not required that the defendant establishes that he was bona fide at the time of acquisition or use or having possession of criminal property. The defense would therefore be available even in situations where the defendant knew that the property stems from the commission of a predicate offense. While the authorities argued that in such cases the person could be convicted under Article 32 of the POCL or Article 37 of the DTOL, the assessors do not agree that this would eliminate the outlined problem for three reasons. First, Articles 32 of the POCL and 37 of the DTOL require proof of the existence of “an arrangement.” While Jersey courts have interpreted the term broadly, the fact remains that it is an element that has to be proven beyond reasonable doubt and, thus, the outlined provisions vary in scope from those of Articles 33 of the POCL and 38 of the DTOL. Secondly, Articles 33 of the POCL and 38 of the DTOL extend to self-laundering, while Articles 32 of the POCL and 37 of the DTOL are limited in scope to third party laundering. Thirdly, whether or not a defendant intends to establish a defense is generally not known until after specific charges have been brought. In practice this would mean that an abuse of Articles 33(2) of the POCL

and 38(2) of the DTOL could be avoided only if the prosecution abstained in all circumstances from bringing charges under those Articles. This cannot be the solution either, as it would effectively render Articles 33 of the POCL and 38 of the DTOL irrelevant. In addition to the above discussed provisions, Articles 32 of the POCL and 37 of the DTOL provide that a person is guilty of money laundering if he enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another (A) of A's proceeds of criminal conduct/of drug trafficking is facilitated or A's proceeds of criminal conduct/drug trafficking are used to secure that funds are placed at A's disposal or used for A's benefit to acquire property by way of investment and if he knows or suspects that A is or has been engaged in criminal conduct/drug trafficking or has benefited from criminal conduct/drug trafficking. While the first part of the provision overlaps to a certain extent with Article 34 of the POCL and 30 of the DTOL, the former requires proof of the existence of an "arrangement" whereas the latter require proof of a specific purpose.

101. Therefore, even though the outlined provisions cover all the material elements of the money laundering offenses as defined in the Palermo and Vienna Conventions, the assessors believe that the defense in Articles 33(2) of the POCL and 38(2) of the DTOL may be open to abuse by money launderers to avoid criminal liability for the acquisition, possession, or use of criminal proceeds.

TL:

102. Terrorism financing offenses are explicitly excluded from the scope of the POCL and money laundering offenses based on terrorism financing may therefore not be prosecuted under the above cited provisions. The TL 2002 itself, however, contains a money laundering provision applicable to terrorism related predicate offenses.

103. Pursuant to Article 18 of the TL, it is an offense to enter into or become concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property, including through concealment, removal from the jurisdiction, the transfer to nominees, or through any other way. In discussions with the authorities it was clarified that the elements of the offense that have to be proven by the prosecution are: (1) the existence of an arrangement; (2) terrorist property; (3) that the arrangement facilitates the retention or control of another's terrorist property; and (4) that the perpetrator knew or should have known at the time the arrangement was made that the property constituted terrorist property.

104. While Article 18 of the TL covers some of the material elements of the money laundering offenses as defined in the Vienna and Palermo Conventions, the requirement to prove all three elements as indicated above would not permit the application of the provision to the full range of situations required by the Conventions. For example, the offense would not cover situations in which a person converts or transfers criminal proceeds for the purpose of disguising or concealing the illicit origin of the property unless the existence of an arrangement can be established beyond a reasonable doubt. Equally, situations in which a person conceals or disguises the true nature, source, location, disposition of, or rights with respect to proceeds of crime would not be covered unless all three elements of the offense can be established. While the authorities held the view that the term "arrangement" would and has been interpreted by the Courts in a rather broad manner (*Michel vs. AG*), the fact remains that it is an element not provided for in the Palermo and Vienna Conventions but that has to be proven beyond reasonable doubt under Jersey law.

The Laundered Property (c. 1.2):

105. Articles 32 of the POCL and 37 of the DTOL 1988 define “proceeds” as “any property which in whole or in part, directly or indirectly, represent [...] proceeds of criminal conduct/drug trafficking”. Article 1 of the POCL and of the DTOL further provide that “property” includes “all property, whether moveable or immovable, vested or contingent, and whether situated in Jersey or elsewhere.”

106. Equally, Article 3 of the TL defines “terrorist property” as any property, which wholly or partly, directly or indirectly represent the proceeds of acts of terrorism, including payments or other rewards in connection with its commission. Article 1 of the TL further stipulates that “property” includes “all property, whether moveable or immovable, vested or contingent and whether situated in Jersey or elsewhere.”

107. None of the provisions expressly refer to corporeal and incorporeal property and legal documents or instruments evidencing title to, or interest in such assets. However, the distinction between “moveable or immovable” property is one used not only with respect to the money laundering provisions, but is fundamental to many different areas of Jersey law. A commentary on “Jersey Insolvency and Asset Tracking,” for example, defines “moveable property” as all property that is not immovable property, including tangible and intangible property and “new economy assets” such as website domain names and software licenses. “Immovable property” is defined to include buildings, land and long term contract leases, and interest in land and buildings. It can be concluded that with respect to proceeds of crime the terms would be interpreted to cover the same scope and therefore extend to any type of property, including corporeal or incorporeal assets, and legal documents or instruments evidencing title to, or interest in such assets.

Proving Property is the Proceeds of Crime (c. 1.2.1):

108. The language of the provisions in the POCL, the DTOL, and the TL do not require a conviction for a predicate offense to prove that certain property constitutes proceeds of crime. This interpretation has been confirmed by the Royal Court in *Michel vs. AG*. While the law is silent on the standard of proof applicable to establish that property stems from an illegal source, the authorities stated that it would have to be established “beyond a reasonable doubt” that property stems from a specific predicate offense. This view was also held by the Royal Court in *Michel vs. AG*.

109. The authorities confirmed that the difficulties in obtaining sufficient evidence to meet the high standard of proof applicable to establish that the property in question is of criminal origin is one of the main challenges in obtaining convictions for the stand-alone money laundering offense, particularly in cases where the predicate offense has been committed abroad.

The Scope of the Predicate Offenses (c. 1.3):

110. As indicated above, the money laundering offenses of the POCL extend to offenses sanctioned with imprisonment of one year or more except drug trafficking offenses and offenses under the TL.

Predicate Offense	Law
Participation in an organized criminal group and racketeering	Article 2 Crime (Transnational Organized Crime) (Jersey) Law 2008.
Terrorism, including terrorism financing	Articles 12-18, 50, 51 TL.
Trafficking in human beings and migrant smuggling	Articles 3-5 Crime (Transnational Organized Crime) (Jersey) Law 2008.
Sexual exploitation, including sexual exploitation of children	Customary Law offenses (<i>Attorney General vs. Benyoucef</i> ; <i>Attorney General vs. Godwin</i> , <i>Attorney General vs. Hamon</i>) as well as Articles 2 and 4 Loi (1895) Modifiant le Droit Criminel, Articles 2-6 Sexual Offences (Jersey) Law 2007, and Article 2 Protection of Children (Jersey) Law 1994.
Illicit trafficking in narcotic drugs and psychotropic substances	Articles 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 19, 21 Misuse of Drugs (Jersey) Law 1999.
Illicit arms trafficking	Articles 2, 19, 23, 27, 32, 33 Firearms (Jersey) Law 2000.
Illicit trafficking in stolen and other goods	Customary Law Offenses (<i>Attorney General vs. Bailey</i> , <i>Attorney General vs. Munks</i>).
Corruption and bribery	Articles 5-7 Corruption (Jersey) Law 2006.
Fraud	Customary Law Offenses (<i>Attorney General vs. Foster</i> , <i>Attorney General vs. Morton</i> , <i>Attorney General vs. Barette</i> , <i>Attorney General vs. Richards</i>) and Article 2 Investors (Prevention of Fraud) (Jersey) Law 1967.
Counterfeiting Currency	Articles 2, 4, 6, and 11 Currency Offences (Jersey) Law 1952.
Counterfeiting and piracy of products	Article 25 Trade Marks (Jersey) Law 2000, Article 5 Merchandise Marks (Jersey) Law 1958, and Article 6 Crime (Transnational Organized Crime) (Jersey) Law 2008.
Environmental crime	Article 17 Water Pollution (Jersey) Law 2000, Articles 90 and 92 Shipping (Jersey) Law 2002, Article 23 Waste Management (Jersey) Law 2005.
Murder, grievous bodily injury	Customary law offenses (<i>Attorney General vs. Holley</i> , <i>Attorney General vs. Caboz</i> , <i>Attorney General vs. Burke</i> , <i>Attorney General vs. Harrison</i>).
Kidnapping, illegal restraining and hostage-taking	Customary law offenses (<i>Attorney General vs. O'Shea</i> , <i>Attorney General vs. Myles and O'Shea</i>) and Article 1 Taking of Hostages (Jersey) Order 1982.
Robbery or theft	Customary law offenses (<i>Attorney General vs. Le Feuvre and Matthews</i> , <i>Attorney General vs. Rodrigues</i> , <i>Attorney General vs. Marrett &</i>

	<i>Kilgour</i>).
Smuggling	Articles 42, 45, and 61 Customs and Excise (Jersey) Law 1999.
Extortion	Customary law offenses (<i>Attorney General vs. O'Shea</i> , <i>Attorney General vs. Le Blancq</i> , <i>Attorney General vs. Duchesne</i>).
Forgery	Customary law offenses (<i>Attorney General vs. Tadier</i> , <i>Attorney General vs. Aubert</i> , <i>Attorney General vs. Ahier</i>).
Piracy	Section 1 U.K. Aviation Securities Act 1982 and Section 9 U.K. Aviation and Maritime Security Act 1990 extended to Jersey through Maritime Security (Jersey) Order 1996 and Civil Aviation Security (Jersey) Order 1993.
Insider trading and market manipulation	Articles 30 and 37 Financial Services (Jersey) Law 1998.

111. All FATF designated categories of predicate offenses are covered, as outlined above. While tax evasion is not a separate statutory offense under Jersey law, the authorities stated that such conduct would be prosecuted as “serious fraud” and as such, would constitute a predicate offense for money laundering. In *Michel vs. AG*, the accused was convicted for stand-alone money laundering based on tax evasion committed abroad.

Threshold Approach for Predicate Offenses (c. 1.4):

112. Jersey has adopted a threshold approach for predicate offenses based on the penalty of imprisonment applicable to the predicate offense. The general money laundering offenses of the POCL refer to proceeds of criminal conduct, whereby Article 1 of the POCL defines “criminal conduct” as conduct which constitutes any offense sanctioned with imprisonment for one year or more.

113. For statutory crimes, the penalties are indicated for each offense. For customary law offenses penalties are always unlimited and thus all customary offenses constitute predicate offenses for money laundering.

Extraterritorially Committed Predicate Offenses (c. 1.5):

114. All three statutes defining money laundering offenses cover both conduct which constitutes a predicate offense in Jersey and any conduct committed abroad that would have constituted a predicate offense had it occurred in Jersey (Article 1 of the POCL and of the DTOL and Article 19 of the TL). Dual criminality is not required. There are also no jurisdictional provisions that would require any other link between Jersey and the perpetrator, such as citizenship or residence as long as the laundering offense has been committed in Jersey.

Laundering One's Own Illicit Funds (c. 1.6):

115. Articles 34 of the POCL and 30 of the DTOL make it an offense for a person to conceal, disguise, transfer, or convert criminal proceeds both in cases where the property stems from the commission of a predicate offense by another or by the person himself.

116. The acquisition, possession, or use of proceeds of criminal conduct, however, is only criminalized if the property involved stems from another person's criminal behavior and does not extend to self laundering. The authorities confirmed that there was no fundamental principle of Jersey law that would prevent the criminalization of self laundering for such conduct.

117. The TL does not extend the money laundering offense to situations where the terrorist or terrorist financier himself conceals or transfers property to maintain control over it. Rather, the offense only covers persons who do so for or on behalf of somebody else.

Ancillary Offenses (c. 1.7):

118. Article 42 of the POCL and Article 62 of the TL provide that a person who aids, abets, counsels or procures the commission of an offense under the cited laws shall be criminally liable. In addition, the common law offenses of attempt and conspiracy also apply with respect to statutory offenses (*Martins vs. AG*) and therefore apply with respect to the money laundering offenses.

119. Article 1 of the DTOL goes beyond the provisions of the POCL and the TL as it also provides for criminal liability for attempts to commit any offenses as defined in the DTOL or conspiracy to commit such crimes.

120. Jersey law therefore allows for the prosecution of all parties that may be involved in the commission of the money laundering offense. In all cases, persons committing an ancillary offense may be liable in the same manner as the principal offender to the penalty provided for that offense.

Additional Element – Could an act carried out overseas which does not constitute an offense overseas, but would be a predicate offense if it occurred domestically, lead to an offense of ML (c. 1.8):

121. As indicated above, all three statutes define money laundering to cover both conduct which constitutes a predicate offense in Jersey or would have constituted a predicate offense had it occurred in Jersey (Article 1 of the POCL and of the DTOL and Article 19 of the TL). Dual criminality is not required.

Liability of Natural Persons (c. 2.1):

122. The three money laundering offenses as outlined above are offenses for which intent is required and therefore apply to persons who knowingly engage in the conduct in question.

123. With respect to the property in question the required mental element varies depending on the actus reus:

- With respect to the acts of concealing, disguising, converting or transferring of criminal proceeds, a person may be held criminally liable if the prosecution can establish beyond a

reasonable doubt that the person knew or had reasonable grounds to suspect that the property in question stems from the commission of a crime.

- For the offense relating to the acquisition, possession, or use of criminal proceeds, the required mens rea is actual knowledge that the property in question constitutes criminal proceeds.
- For the acts of assisting another person to retain the benefit of crime it suffices that the prosecution can establish beyond a reasonable doubt that the perpetrator knew or suspected that the person with whom he/she entered into an agreement is or has been engaged in or has benefited from criminal conduct. While it is not required that the prosecutor establishes the perpetrator's actual knowledge about the criminal source of the property involved, the defendant has a defense and therefore a right to acquittal if he/she can establish by preponderance of evidence that he did not actually have knowledge of the criminal nature of the property in question.
- For money laundering based on the predicate offense of terrorism or terrorism financing, the TL does not expressly stipulate a mental element requirement with respect to the nature of the property but provides that the defendant has a defense if he/she can prove by a preponderance of evidence that he did not know and objectively had no reasonable cause to suspect that the arrangement related to terrorist property.

124. At a minimum, and with respect to all acts constituting money laundering, a person may therefore be held criminally liable for money laundering if he acted intentionally and with the knowledge that the property involved stems from a criminal source. The Vienna and Palermo Conventions set forth a minimum standard that the perpetrator acts in the knowledge that the laundered property is the proceeds of crime. Intent as defined under Jersey law therefore meets the international standard with respect to the mental element requirement.

The Mental Element of the ML Offense (c. 2.2):

125. None of the three Acts contain a provision clarifying whether or not the mental element may be inferred from objective factual circumstances. However, the English common law principle regarding the ability to make reasonable inferences from objective factual circumstances, confirmed by the Royal Court in *Michel vs. AG*, applies also with respect to the money laundering offenses.

126. Additionally, with respect to the acts of concealing, disguising, converting, or transferring of criminal proceeds it is sufficient for the prosecution to show that the perpetrator had reasonable grounds to suspect that the property in question constitutes proceeds of crime. Therefore, the provision expressly allows for the intentional element of the offense to be inferred from objective factual circumstances.

Liability of Legal Persons (c. 2.3. and 2.4.)

127. The money laundering provisions of the POCL, the DTOL, and the TL apply to any "person" without differentiating between legal and natural persons. Article 3 of the Interpretation (Jersey) Law 1954 provides that the expression "person" shall extend to legal persons unless it is stated otherwise.

128. The language of the money laundering offenses does not preclude the possibility of parallel criminal, civil, or administrative sanctions for perpetrators that are legal entities. The authorities confirmed that both criminal and civil/administrative action could be instituted against legal persons at the same time, but it was pointed out that, in practice, criminal proceedings would always take priority under the customary law maxim of *le criminel tient le civil*. In any case, there would be close cooperation between the JFSC and the AG's office to avoid administrative action having an adverse impact on criminal proceedings. At the time of the assessment, no legal entities had been held criminally liable for money laundering in Jersey. However, a TCB had previously been prosecuted and held criminally liable for a breach of the CDD obligations under the Money Laundering Order.

Sanctions for ML (c. 2.5):

129. Pursuant to Articles 32(6), 33(9), 34(4) of the POCL, Articles 30(4), 37(6), 38(9) of the DTOL and Article 18(3) of the TL, the sanctions applicable to both natural and legal persons convicted for money laundering are imprisonment for a term not exceeding 14 years or to a fine, or both.

130. The sanction for money laundering seems to be in line with other serious crimes under Jersey law. For example, corruption, insider dealing, and market manipulation may be sanctioned with imprisonment of up to ten years and to a fine and terrorism financing with imprisonment of up to 14 years. Jersey's sanctions for money laundering are identical to those of the U.K. and the Isle of Man.

131. The strictest sanction actually imposed by Jersey courts at the time of the assessment was nine years imprisonment for the stand-alone money laundering offense.

Effectiveness:

132. As of the time of the assessment mission, Jersey had conducted 17 investigations for money laundering, of which three investigations were terminated before charges were brought, two investigations are ongoing, and 12 investigations led to prosecutions.

133. Of the 12 prosecutions, one case was terminated during prosecution, one case was pending, and 10 cases resulted in a conviction. In three cases, the charges were brought based on Article 34 of the POCL, in one case they were brought pursuant to Article 38 of the DTOL and in all other cases, charges were brought based on Article 32 of the POCL or Article 37 DTOL.

134. The sentences imposed range from 140 hours community service to nine years imprisonment. The average term of imprisonment was 3.7 years.

135. In the absence of complete and accurate statistics on the number of SARs resulting in an investigation for money laundering, including the cases terminated, it is somewhat difficult to form a final opinion on the effective application of Jersey's money laundering provision. Considering that many of the SARs filed related to money laundering cases where the predicate offenses has been committed abroad and the offender was not located in Jersey, the assessors agree that Jersey might be in a more difficult position to prosecute money laundering and that therefore the number of SARs filed would not necessarily be an indicator for the appropriate number of domestic investigations or prosecutions.

136. Unlike other jurisdictions facing similar challenges as Jersey in prosecuting money laundering, Jersey has, however, successfully developed its own jurisprudence on money laundering, including autonomous money laundering. Furthermore, when comparing the number of domestic investigations and prosecutions with the number of convictions obtained for money laundering, including autonomous money laundering, the criminal provisions relating to money laundering seem to be implemented effectively. 58 percent of investigations for money laundering resulted in a conviction.

2.1.2. Recommendations and Comments

- Amend Articles 34 of the POCL and 30 of the DTOL to:
 - provide for two alternative purposes for the acts of converting and transferring proceeds, namely to avoid prosecution for the predicate offense or to conceal the illicit origin of the funds, and;
 - to eliminate the purpose requirement for the acts of converting and transferring proceeds of crime.
- The defense (payment of adequate consideration) provided for in Articles 33(2) of the POCL and 38(2) of the DTOL is not provided for in the Vienna and Palermo Conventions and should be eliminated as it may allow money launderers to abuse the provision to avoid criminal liability for the acquisition, possession, or use of criminal proceeds.
- Amend Article 18 of the TL to cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions.
- Amend the offenses of acquisition, possession, or use of the POCL and DTOL, as well as the money laundering offense contained in the TL 2002 to include criminal proceeds obtained through the commission of a predicate offense by the self-launderer.
- The authorities should assess whether the level of proof applied to show that property stems from the commission of a specific predicate offence poses a barrier to obtaining convictions for stand-alone money laundering.

2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	LC	<ul style="list-style-type: none"> • Articles 34 of the POCL and 30 of the DTOL are not sufficiently wide to fully meet the international standard due to the requirement that acts of “concealing or disguising” and “converting or transferring” are carried out with the purpose of avoiding prosecution for a predicate offense. • The defense (payment of adequate consideration) provided for in Articles 33(2) of the POCL and 38(2) of the DTOL is not consistent with the Vienna and Palermo Conventions and may allow money launderers to abuse the provision to avoid criminal liability for the acquisition,

		<p>possession, or use of criminal proceeds/proceeds.</p> <ul style="list-style-type: none"> Article 18 TL does not cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions. The offenses of acquisition, possession, or use of the POCL and DTOL as well as the money laundering offense contained in the TL do not extend to self-laundering.
R.2	C	

2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework:

137. Jersey law criminalizes the financing of terrorism through Articles 13–17 of the TL.

138. As indicated under Recommendation 1, Jersey is a Crown Dependency and cannot sign or ratify international conventions in its own right. Rather, the U.K. is responsible for Jersey’s international affairs and may arrange for the ratification of any Convention to be extended to Jersey.

139. The U.K.’s ratification of the International Convention for the Suppression of the Financing of Terrorism (“FT Convention”) has been extended to Jersey on September 25, 2008. Of the remaining 15 international counter-terrorism related legal instruments, the Unlawful Seizure Convention, the Civil Aviation Convention, the Diplomatic Agents Convention, the Hostage Taking Convention, and the Nuclear Material Convention have been extended to Jersey.

Criminalization of Financing of Terrorism (c. II.1):

140. Article 15 of the TL constitutes the main terrorism financing offense. The provision makes it an offense for a person to receive or provide or invite another to provide property where the person either intends that the property will be used or has reasonable grounds to suspect that the property may be used for the purpose of terrorism.

141. Articles 16 of the TL criminalizes the use of property for terrorism purposes as well as the possession of property where the person possessing the property either intends to use it for terrorism or has reasonable cause to suspect that it may be used for terrorism.

142. Article 17 of the TL furthermore provides that it is an offense for a person to enter into or become concerned in an arrangement as a result of which property is made available or is to be made available to another and the person knows or has reasonable cause to suspect that it will or may be used for purposes of terrorism.

143. Pursuant to Article 3 of the TL, the term “terrorist property” extends to property likely to be used for the purpose of terrorism, including property of a proscribed organization, as well as the proceeds of the commission of terrorist acts and acts carried out for the purpose of terrorism. Article 1

further specifies that “property” includes all property whether movable or immovable, vested or contingent, and whether situated in Jersey or elsewhere.

144. The international standard requires that the terrorist financing offense extends to any person who provides or collects funds by any means, directly or indirectly, with the intention that they be used for terrorist acts, by a terrorist organization or by an individual terrorist:

Terrorist Acts:

145. Article 2 of the TL defines “terrorism” as the use or threat of action where (1) the act involves serious violence against a person or damage to property, endangers a person’s life other than that of the person committing the act, creates a serious risk to the health or safety of the public or a section thereof, or is designed to interfere with or seriously disrupt an electronic system, and (2) the use or threat is designed to influence a government or to intimidate the public or a section thereof and is for the purpose of advancing a political, religious, or ideological cause. If, however, any of the acts listed under (1) involve firearms or explosives and are committed for the purpose of advancing a political, religious, or ideological cause, it is considered terrorism regardless of whether the requirements listed in (2) are met.

146. Under the FATF standard, “terrorist acts” include (1) offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention and (2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

147. With respect to the generic terrorism offense it would appear that the scope of Article 2 of the TL covers most aspects of the FATF definition. While the latter is limited to acts against civilians, the former covers violence against any person or property as long as the act is designed to influence a government or intimidate the public. However, while the FATF definition also includes acts designed to intimidate an international organization, no such reference to international organizations is contained in the TL.

148. As indicated above, for the generic offense, Jersey law provides that only acts undertaken or threats made with the intention of advancing a political, religious, or ideological cause would constitute “terrorism.” This approach, which adds an element not set forth directly in the FT Convention, is one that a number of countries have adopted to ensure the generic definition is not used in circumstances where it was not intended. The authorities should assess the advantage of this approach in the domestic context in implementing the Convention, and ensure that Jersey’s ability to prosecute in factual settings contemplated by the Convention would not be negatively impacted.

149. Article 2 of the TL does not contain an express reference to the offenses defined in the 9 Conventions and Protocols listed in the Annex to the FT Convention. To satisfy the requirements of the international standard on that point, the generic terrorism offense must be broad enough to cover all offenses defined in the mentioned Conventions and Protocols. However, while the use or threat with the use of serious violence is required for an act to fall under the definition of Article 2 of the TL as outlined above, some of the offenses in the Conventions and Protocols do not require the use of

violence or threat thereof. For example, the Nuclear Material Convention makes it a terrorism offense to possess nuclear material if the prescribed mental element is met.

150. It should be noted that Jersey has criminalized all offenses defined in the nine Conventions and Protocols listed in the Annex to the FT Convention. However, as the scope of the terrorism financing offense is defined based on the definition of “terrorism” as discussed above, the offenses cannot be taken into account for the purpose of assessing SR II.

151. In practice the scope of the terrorism offense in the TL may therefore cover many but clearly does not extend to all “terrorist acts” as defined in the FATF standard.

Terrorist Organizations:

152. Article 2(5) of the TL provides that any reference to “action taken for the purpose of terrorism” would include action taken for the benefit of a proscribed terrorist organization. Articles 15–17 of the TL therefore apply to the provision or collection of funds for the benefit of proscribed terrorist organizations, whereby an organization is proscribed if it is listed in Schedule 1 to the TL. The TL does not provide for a generic definition of “terrorist organization”.

153. To some extent Article 15 of the TL also applies to situations where a person collects or provides funds that he/she has reasonable cause to suspect may be used for terrorism. If a person funds a terrorist organization not “proscribed” by the States, it is assumed that he/she has reasonable cause to suspect that the money may be used for terrorism and may therefore be held criminally liable for terrorism financing.

154. However, the terrorism financing provisions of the TL have never been tested before the courts and it has not been established in what circumstances property is considered to be “used for terrorism”. It is therefore unclear whether the financing of terrorist organizations could be prosecuted under the cited provisions in cases where the support relates to costs of living, education expenses, or similar expenses. Representatives of the AG’s office held the view that in the described situation, a financier would be prosecuted for an ancillary offense. However, this would only be possible in cases where an act has, at a minimum, been attempted and would not cover situations in which an act has not yet taken place.

Individual Terrorists:

155. The TL does not expressly criminalize the financing of individual terrorists, nor does it contain a definition of the term “terrorist”. However, Articles 15–17 of the TL extend to situations where a person collects or provides funds that he/she has reasonable cause to suspect may be used for terrorism. The authorities have indicated that in Jersey, if a person provides funds to an individual terrorist, he/she would be assumed to have reasonable cause to suspect that the money “may” be used for terrorism and could therefore be held criminally liable for terrorism financing.

156. The standard of “reasonable cause to suspect” that the funds “may” be used for terrorism is a relatively low one. Nonetheless, it is not clear that the provision of living and private expenses to an individual terrorist would be covered by Jersey’s provisions, as interpreted by a court. The assumption is not set forth in the statutory language. Even if the court were to assume this, evidence can be adduced to rebut the assumption. There is no jurisprudence on the issue. In addition, for the reason outlined above, such situations would not necessarily be covered by the ancillary offenses.

157. However, the provision of any funding to such individuals is a criminal offense under the Al-Qa'ida and Taliban (UN Measures) (Channel Islands) Order 2002 and the Terrorism (UN Measures) (Channel Islands) Order 2001, respectively, and prosecutions in Jersey could be initiated directly based on the provisions of those Orders. The latter not only applies to individuals and entities designated pursuant to UN Resolution 1373 but extends to any person within Jersey and any British citizen elsewhere who is ordinarily residing in Jersey or body corporate established under Jersey law. With these provisions and the possibility that the funding would also be captured by Articles 15–17, Jersey has clear avenues to impose criminal liability for the funding of the living and private expenses of individual terrorists.

158. Article 15(5) of the TL provides that a reference to the “provision of property” would include property being given, lent, or otherwise made available, whether or not for consideration. Article 1 further provides that “property” extends to all property whether movable or immovable, vested or contingent, and whether situated in Jersey or elsewhere. The language of the provision is not limited to property that stems from illegitimate sources and the authorities confirmed that terrorism property as defined in Article 3 in connection with Article 1 of the TL would extend to property from illegal as well as legitimate sources. While the provision does not expressly refer to corporeal as well as incorporeal property and any legal documents or instruments evidencing title to, or interest in such assets, based on the definition of “moveable and immovable” property as contained in laws and commentaries relating to other areas of the law (as outlined under Recommendation 1), it can be concluded that with respect to proceeds of crime the terms would be interpreted to cover the same scope and therefore extend to any type of property, including corporeal or incorporeal assets, and legal documents or instruments evidencing title to, or interest in such assets.

159. The terrorism financing provisions do not require that the funds provided are actually used to carry out or attempt the commission of a terrorist act or that the funds are linked to a specific terrorist act. It is merely required that the funds are intended for use in the commission of a terrorist act or that the financier has reasonable cause to believe that they will be used for terrorism or for the benefit of a proscribed terrorist organization.

160. Article 62 of the TL provides for the ancillary offenses of aiding, abetting, counseling, or procuring the commission of terrorist financing. In addition, the common law offenses of attempt and conspiracy also apply with respect to statutory offenses (*Martins vs. AG*) and therefore also apply to the terrorism financing offense of the TL. In all cases, persons committing an ancillary offense may be liable in the same manner as the principal offender to the penalty provided for that offense.

161. Jersey law therefore allows for the prosecution of all parties that may be involved in the commission of a terrorism financing offense.

Predicate Offense for Money Laundering (c. II.2):

162. As outlined under section 1.1 of this report, offenses under the TL are expressly excluded from the money laundering offenses of the POCL. However, the TL itself, through Article 18, contains a money laundering offense which is exclusively applicable to situations in which the funds involved constitute terrorist property. Further information on the elements as well as the shortcomings of the TL money laundering offense may be found in section 1.1 of this report.

Jurisdiction for Terrorist Financing Offense (c. II.3):

163. Article 19 of the TL provides that a person may be held criminally liable for any acts committed outside Jersey that would have constituted a terrorist offense pursuant to Articles 15-17 of the TL had they been committed on Jersey. Furthermore, the term “action” includes any action outside Jersey; “person or property” includes any person or property, wherever situated; and “the public” extends to the public of any place or country other than Jersey.

164. The terrorist financing offenses of the TL therefore apply regardless of whether the person alleged to have committed the offense is in the same or a different country from the one in which the terrorist or terrorist organization is located or the terrorist act occurred or will occur. There are also no jurisdictional provisions that would require any other link between Jersey and the perpetrator, such as citizenship or residence.

The Mental Element of the TF Offense (applying c. 2.2 in R.2):

165. As outlined above, the terrorism financing offense under the TL requires that the perpetrator either knows or intends that the funds are being used for a terrorist act or has reasonable cause to believe that they may be used for terrorism purposes, including for the benefit of proscribed terrorist organizations.

166. As in the case of the POCL and the DTOL, the TL does not expressly provide that the intentional element required for the commission of the terrorism offense may be inferred from objective factual circumstances. However, the English common law principle regarding the ability to make reasonable inferences from objective factual circumstances, confirmed by the Royal Court in *Michel vs. AG*, applies also with respect to the terrorism financing offense.

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):

167. The terrorism financing offenses of the TL apply to any “person” without differentiating between legal and natural persons and Article 2(4)(b) provides that the reference extends to any person, wherever situated. Article 3 of the Interpretation (Jersey) Law 1954 applies the definition of “person” to both legal and natural persons and Article 63 of the TL expressly provides that where an terrorism offense is committed by a legal person, the natural person in charge of managing the legal person may be held liable in the same manner as the legal person to the penalty provided for the offense.

168. The language of the terrorism financing offenses does not preclude the possibility of parallel criminal, civil or administrative sanctions for perpetrators that are legal entities. The authorities confirmed that both criminal and civil/administrative action could be instituted against legal persons at the same time, although in practice criminal proceedings would always take priority under the customary law maxim of *le criminel tient le civil*. In any case, there would be close cooperation between the JFSC and the AG’s office to ensure that administrative action did not prejudice criminal investigations or proceedings.

Sanctions for FT (applying c. 2.5 in R.2):

169. The sanctions applicable for terrorist financing pursuant to the TL are imprisonment for a term of up to 14 years or a fine or both. Jersey’s sanctions for terrorist financing are identical to those

of the U.K. and the Isle of Man. As there has never been a conviction for terrorist financing on Jersey, no sanctions have ever been imposed.

Effectiveness:

170. There have been no investigations or prosecutions relating to domestic terrorism financing and the terrorism financing offense has therefore never been tested before the courts in Jersey.

2.2.2. Recommendations and Comments

- Amend Article 2 of the TL to include a reference to international organizations.
- Amend the definition of “terrorism” in Article 2 of the TL to extend to all terrorism offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention.
- Consider the impact of including in the FT offense “intention of advancing a political, religious or ideological cause” on Jersey’s ability to successfully prosecute in the factual settings contemplated by the FT Convention.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none"> • Article 2 of the TL does not contain a reference to international organizations. • The definition of “terrorism” in Article 2 of the TL does not extend to all terrorism offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention.

2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1. Description and Analysis

Legal Framework:

171. There is no single statutory instrument covering all instances of seizure and confiscation of criminal assets or proceeds in general. Relevant provisions are found in three different Acts: the legislation covering seizure and confiscation of proceeds of crime in respect of ML and FT is currently found in the DTOL (confiscation and seizing of the proceeds of drug trafficking offenses), the TL (freezing and forfeiture of terrorism related assets), and the POCL (confiscation and seizing of the proceeds of all offenses, other than drug offenses, including TL offenses).

172. Confiscation of Property related to ML, FT or other predicate offenses including property of corresponding value (c. 3.1):

Proceeds

General Regime

173. Except for drug trafficking and terrorism related cases, the relevant provisions of POCL , Part 2 apply. A confiscation order is issued by the Royal Court upon conviction, ordering the defendant to pay the lesser sum of the benefit obtained, or the realizable amount at the time the order is made. The offender has to be found guilty of an offense detailed in schedule 1 of the POCL, namely an offense, excluding a drug trafficking offense, carrying a penalty upon conviction of one or more years. The Court has to be satisfied that the offender has benefited from that offense or from that offense together with any other offense for which he is convicted in the same proceedings, or within a ‘relevant period’, being a period of six years that ends when the current proceedings are instituted against the defendant.

174. ‘To benefit from an offense’ is defined as to obtain property as a result of, or in connection with the conduct forming the predicate offense, or the commission of such predicate offense. The benefit is the amount of property so obtained. (POCL Article 1(1)) Issuing a confiscation order is at the Court’s discretion. The AG can request such an order or the Court may order it even without such a request if it considers it appropriate. The Court will assess the benefit of the criminal conduct and order the offender to pay a sum equal to that benefit, or an amount the Court estimates to be realizable at the time of the order, whichever is the lesser amount. In making this determination, the Court may take into account (and deduct as appropriate) amounts a victim recovers from a defendant in a civil proceeding that relates to the same offense (POCL Article 4(1) and (2)). If payment of the amount ordered after the assessment of benefit is not forthcoming the Court may order the defendant to be imprisoned for a fixed term to be specified in the order in default of payment of the amount. This specified period shall not exceed ten years (POCL Article 11 (1) and (2)). The Court may issue a ‘*saisie judicare*’ or freezing order over realizable property when a confiscation order has been issued (POCL Article 15(1)(a)). The Court may empower the Viscount to realize, in such a manner as it may direct, any realizable property subject to a ‘*saisie judicare*’ to satisfy a confiscation order (POCL Article 17(1)(a) and (d)). If the Court in making a confiscation order considers one or more offenses committed in the relevant period, the POCL , Article 5 gives detailed instructions on how the benefit from this ‘relevant criminal conduct’ has to be assessed, but basically it has to be understood as any property held by the defendant at any time since the date of the conviction, together with any property transferred to the defendant at any time since the beginning of the ‘relevant period’, coupled with any expenditure made by the defendant in the ‘relevant period’.

Drugs

175. The confiscation regime in the context of drug offenses is similar to that of POCL. DTOL also provides for the possibility of confiscation of the benefits upon conviction for drug trafficking, on application of the AG or if the Royal Court considers it appropriate. The rules on the assessment of the benefits and payment or realization of the confiscated amount are similar to those of assessing the benefit of relevant criminal conduct over a relevant period (POCL Article 5). In the case of ancillary offenses committed under Articles 30, 37 or 38, the Court may only consider the aggregate of benefits, payments, or other rewards received in connection with the ancillary offense.

176. The procedures for the noncompliance and enforcement of drug offense related confiscation orders are no different from those contained in the POCL.

Terrorism

177. TL provides for the possibility of making forfeiture orders upon conviction of the defendant for terrorism offenses, including the financing of terrorism and laundering of terrorist property (TL Articles 15–18). The use of different terminology for terrorism offenses, that is “forfeiture” rather than “confiscation” is explained by the fact that the order does not relate to a sum equivalent to an illegally gained benefit but rather in the case of fund raising and money laundering offenses to the money and other property that an offender possesses or controls at the time of the offense with the intention to be used for terrorism purposes (including the financing thereof) or where he had reasonable cause to suspect that it would be used for that purpose. Payments and rewards in connection with the terrorism offenses are also subject to forfeiture. The issuing of forfeiture orders is at the discretion of the Court, and does not require a prior application by the prosecutor. TL Schedule 3 provides further detail in respect of the implementation of forfeiture orders. It requires any property to which the forfeiture order applies to be handed to the Viscount. The Viscount is empowered to dispose of property to satisfy the order. Schedule 3 further provides for the Royal Court to issue a ‘restraint order’ to prohibit any person from dealing in any property liable to a forfeiture order.

Instrumentalities

General

178. The power to confiscate (or “forfeit” in the case of some items) instrumentalities used or intended for use for criminal purposes is provided for in the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001, Article 6. Any property (intended to be) used for or facilitating the commission of an offense by a person convicted of the offense, and which was in his possession or under his control at the time of his apprehension or summons or was otherwise lawfully seized, can be forfeited by the Court with an order depriving the offender of his rights in respect of that property. The property is then taken into the possession of the Police, irrespective of whether it has been previously seized. Forfeiture of the instrumentalities of crime under this law applies to all crimes, including drug trafficking and terrorism.

Drugs

179. Additionally, instrumentalities used in or intended to be used in drug offenses can also be forfeited according to the Misuse of Drugs (Jersey) Law 1978, Article 29, empowering the Court, upon conviction, to forfeit anything shown to relate to the drug offense, to be either destroyed or dealt with in such a manner as the Court may order.

Terrorism

180. Besides the general regime of the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001, forfeiture of terrorism-related instrumentalities may also be captured under TL, Articles 26(2)(b) and 26(3)(b), forfeiting all property intended to be used for terrorism purposes (including raising funds for and financing of terrorism).

Equivalent value

181. The confiscation regime of POCL and DTOL is essentially equivalent value-based by itself. It provides for the payment of a sum that in principle reflects the value of the proceeds (“benefits”) of

crime. The confiscation order is then executed on the assets (“realizable property”) of the offender. It does not matter whether they have any relation with the offense or not.

182. The TL forfeiture provisions specifically target money and other property that is related to the terrorism offense and in the possession or under the control of the offender when he committed the offense. The TL 2002 does not provide for equivalent value confiscation or forfeiture. None of the rules regarding value confiscation that appear in POCL or DTOL apply to the TL situations.

Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

183. As noted, confiscation under POCL and DTOL is value based. The criminal proceeds are not subject to confiscation as such but, in calculating the total value of the benefits the offender gained from his criminal conduct, the Court will take into account all benefits derived directly or indirectly therefrom, which would include substitute assets, investment yields and other profits. It does not matter if the proceeds are held by the offender or by a third party. If no voluntary payment follows, the Court may issue a ‘*saisie judiciaire*’ effectively seizing realizable property which is then vested with the Viscount. The Viscount is then able to realize the offender’s “realizable property” in order to satisfy a confiscation order. “Realizable property” is defined in both Laws as “any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, and any property to which the defendant is beneficially entitled”.

184. Proceeds of FT offenses, subject to forfeiture under TL , Article 26, are defined in Article 3 as property wholly or partly and directly or indirectly representing the proceeds of terrorism-related activity. The definition also covers payments and other rewards and would consequently cover all immediate and derived benefits.

185. Forfeiture of instrumentalities of (whatever) crime relates to identified objects, whether or not the property of the offender.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):

186. At the investigation stage the Police have a general power of seizure of items or other property based on establishing reasonable grounds that they are the product of crime (“obtained in consequence of the commission of an offense”) or have an evidentiary value (Police Procedures and Criminal Evidence (Jersey) Law 2003 (PPCEL), Article 21). Criminal proceeds could fall under both categories, especially if materially present in the form of cash. Police seizure of assets unrelated to the offense under investigation (equivalent value seizure) is not possible under the PPCEL.

General

187. Conservatory measures to preserve assets, both proceeds and property of corresponding value, subject to a confiscation order and to prevent their dissipation are found in POCL, Articles 15 and 16 (*saisie judiciaire*). Such an order is issued by the Royal Court prohibiting any person from dealing with any realizable property, subject to such conditions and exceptions as may be specified in the order. *Saisies judiciaires* can only be issued if criminal proceedings have been, or are about to be instituted in Jersey against the defendant for an offense to which POCL applies. Such orders are available only if the confiscation proceedings have not been concluded and either a confiscation order has been made or the court expects a confiscation order may be made. *Saisies judiciaires* can also be

varied to take into account a future change of circumstances , such as a change in the level of assets available to the defendant (Articles 13, 14 and 19).

Drug Trafficking

188. The use of *saisies judiciaires* for purposes Articles 24 and 25 of DTOL is similar to that outlined above. Proceedings must have been, or be about to be instituted against the defendant in Jersey for a drug trafficking offense, and confiscation proceedings have not been concluded and either a confiscation order has been made or the court expects a confiscation order may be made. *Saisies judiciaires* can also be issued to take into account new elements such as a change in the level of assets available to the defendant (Sections 13, 14, and 19).

Terrorism financing

189. Pursuant to TL 2002, Article 26(8), and Paragraphs 3–6 of Schedule 3 of the same legislation, the Royal Court may issue a restraint order prohibiting any person, subject to any conditions the court decides, from dealing with any property liable to a forfeiture order that has been made, once proceedings have been instituted against a person for a terrorist funding offense.

Informal Freezing (Consent/Nonconsent by JFCU) Arrangement

190. Outside the formal judicial process, the structure of Jersey’s legislation sometimes has the same effect as a freezing order. Once the JFCU receives SARs whether, through a hard copy or facsimile transmission, it can either consent to the financial activity mentioned in the SAR or not. This process is overseen by JFCU managers. The effect of a consent may be to provide a defense under Articles 32 and 33 of the POCL (and equivalent provisions in the DTOL and TL), and is referred to in the Handbook for Regulated Businesses (paragraph 6.4.2). Conversely, the absence of a consent inhibits the service provider from completing any financial service for the customer for fear of committing a money laundering offense. Where the service provider fails to take steps when instructed by the customer in accordance with the mandate, as a result of the absence of a consent, that failure has the same effect as a freezing order. Of course, it could also expose the reporting institution to potential litigation from the affected customer.

191. The JFCU endeavors to provide a decision indicating the JFCU provides consent to the financial activity on a best possible available service basis. Most responses are issued within 24 to 48 hours. Consent is not granted initially in about two percent of SARs, but in about half of these, consent is granted within a short period of time. The longest current nonconsent arrangement dates back to 2002 and this length of time is due to protracted investigation and prosecutorial action.

192. A person affected by a nonconsent decision has two avenues to challenge that decision. First, a person may commence proceeding against the financial services provider for breach of contract and/or mandate. The authorities anticipate that where such an action is brought, the applicant may have difficulty if he/she cannot show that there was a lawful provenance for the assets in question. Secondly, the person may file a case in the Royal Court seeking judicial review of an administrative decision based in common law. In such a review, the person would have to prove that no reasonable Police officer could withhold consent in the circumstances. To achieve this, a client would have difficulties in the absence of access to all the information upon which the Police officer based the decision. This would be generally unavailable due to its protected nature.

Seizure of Cash – Terrorism and General

193. The Proceeds of Crime (Cash Seizure) Law 2008 POC(CS)L, Article 4 contains provisions for seizure and detention of “tainted cash”. This also extends to any financial instrument convertible into cash, as defined in Article 1. The meaning of ‘tainted cash’ extends to cash that is used or intended to be used in unlawful conduct, or obtained in the course of, from the proceeds of, or in connection with, unlawful conduct. Offenses against the POCL, DTOL and TL resulting in ‘tainted cash’ can trigger seizures under this law.

194. An “authorized officer” (Customs, Police) may seize “tainted cash” for an initial period of 48 hours, after which an order of the Bailiff is required to detain the cash for a period of up to three months, with a total maximum retention period of 2 years.

195. Seizure during an investigation and of other terrorism related items as “evidence” can be effectuated under the relevant provisions of the PPCEL, Article 21.

Equivalent value restraint

196. Restraint of assets of equivalent value is adequately covered by the restraint order provisions of POCL and DTOL. Such restraints are in support of an eventual value-based confiscation of realizable property. No relation with the offense is required. It is not clear if equivalent value conservatory measures are available under TL.

Ex Parte Application for Provisional Measures (c. 3.3):

197. Current legislation allows for ex parte applications both to freeze or seize property under the provisions of *saisies judiciaires* under POCL and DTOL, and for restraining orders under TL. Such applications are made ex-parte to the Bailiff in chambers by the AG. Once an order is made, notice of the order is provided to persons affected by the order.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

198. A first and important role in the detection of suspected criminal proceeds is played by the JFCU/FIU as receiving agency of the suspicious activity reports made by the industry under AML/CFT legislation.

199. At the investigation stage there are several options open to the Police:

- They can apply to the Bailiff to issue a production order pursuant to POCL Article 40, DTOL Article 42, or TL Article 31 and paragraph 4 of Schedule 5 requiring the person who holds the required information to produce it to a Police officer.
- If necessary, the Police officer can immediately apply to the Bailiff for a search warrant under the provisions of POCL Article 41, DTOL Article 31 or TL Article 31 and paragraphs 1-1 and paragraphs 6-10 of Schedule 5.
- A Police officer, of or above the rank of chief inspector, may apply to the Bailiff for a Financial Information Order requiring a person carrying on a financial service business to

provide customer information under POCL Article 41A and Part 1 of Schedule 3, DTOL Article 44A and Part 1 of Schedule 2, TL Article 32 and Schedule 6.

- A Police officer, of or above the rank of chief inspector, may apply to the Bailiff for a Account Monitoring Order requiring a person carrying on a financial service business to provide customer account information under POCL Article 41A and Part 2 of Schedule 3, DTOL Article 44A and Part 2 of Schedule 2, TL Article 33 and Schedule 7.

200. A special procedure is used in cases of “serious or complex fraud” and is interpreted as including any dishonest operative representation which generates or is intended to generate substantial illegal benefits. Serious money laundering activity would fit within that concept. Investigation of Fraud (Jersey) Law 1991 (IOFL), Article 2 empowers the AG to require from any person he has reason to believe has relevant information to attend before him and answer questions and furnish information with respect to any matter relevant to the information. This procedure does in principle not require a court intervention, but confers a discretionary power on the AG which is subject to judicial review (based on the criterion of reasonableness).

Protection of Bona Fide Third Parties (c. 3.5):

POCL and the DTOL 1988

201. The procedure for assessing the value of realizable property takes into account the rights of creditors and of bona fide third parties by defining the “amount that might be realized” as the total value of property less the value of any obligations having priority and defining the value of that property as the market value of that property less the value of any other person’s interest in that property (POCL Article 2, DTOL Article 2). Provision is also made for bona fide third parties to make representation to the Bailiff to vary or discharge a *saisie judiciaire* (POCL Article 16(7), DTOL Article 16(7)).

202. TL Article 25(7) provides for innocent third party protection in the context of forfeiture orders, giving any interested third person the opportunity to be heard by the Court before the order is issued. Forfeiture of instrumentalities under the CIFJL, can be challenged before the Court by third parties under Article 2(5). Forfeiture of cash under the POC(CS)L, can be challenged before the Court under Article 11. In addition, there is always the general right of any person who feels wronged by confiscation or forfeiture measures to apply at any time to the Royal Court in order to obtain a judicial review.

Power to Void Actions (c. 3.6):

203. In general, actions that are intended to willfully obstruct effective confiscation or forfeiture of criminal proceeds in whatever form constitute criminal offenses that amount to aiding and abetting money laundering and as such they give cause to prosecution. Any such actions would be illegal, so any such contracts or agreements are not taken into account in confiscation/forfeiture decisions.

204. As a matter of common law, courts will void contracts contrary to public policy (*Basden Hotels Ltd .v. Dormy Hotel Ltd 1968 JLR 91*). Further under common law, contracts made for or about any matter or thing which is prohibited or made unlawful by statute is a void contract (*Jameson (TW) Ltd .v. Cumming Butler 1981 J.J. 18*).

Analysis:

205. With the exception of the issues raised below, the Jersey legal framework underpinning the seizure and confiscation system related to proceeds of crime is generally solid and comprehensive. The (similar) relevant provisions of POCL and DTOL adequately provide for a value-based confiscation regime capturing in principle any benefit that the offender may have gained as a result of his criminal conduct. The benefit assessment procedure followed by the court is quite detailed and takes into account all factors necessary to come to a fair estimation. The provisions of TL also appropriately focus on the deprivation of the assets related to FT.

206. There are, however, some issues that need review in respect of compliance with the international standards:

207. The deficiencies identified with the criminalization of ML and FT also affect the criminal conviction-based confiscation and forfeiture. To the extent that such offenses do not meet international standards, there will be a corresponding inability to confiscate or forfeit what would otherwise be proceeds of crime or instrumentalities of the offenses.

208. Equivalent value restraints pursuant to POCL Article 16 and DTOL Article 16 can only be issued when proceedings have been instituted, or are about to be instituted against a defendant. Use of this standard provides persons under investigation with an opportunity to dispose of assets as soon as he/she is alerted to any investigative action so as to avoid the availability of such assets for restraint and ultimate confiscation. This has potential to adversely affect the effectiveness of a confiscation regime. However, this is ameliorated somewhat because in those cases where the JFCU is asked to provide assistance or a request is made for mutual legal assistance, the authorities do give consideration to disclosing this to the relevant financial institution(s). With such a disclosure, there is a basis for a SAR to be made, and an informal freeze of the property held in Jersey may result. Thus, in some but not all situations, there is an ability to restrain equivalent value even in the absence of a showing that proceedings are about to be instituted.

Confiscation and Freezing Data – Drug offenses (DTOL) (Source: Viscount's Department).

Year	2006	2007	2008
Number of new <i>saisies judiciaires</i>	18	35	40
Approximate value of assets restrained.	£41,924	£64,497	£164,336
Number of cases in which confiscations ordered.	20	40	34
Total value of confiscation orders executed (amount recovered)	£1,100,739	£676,658	£105,412
Number of cases where assets remain under restraint at the end of the year.	13	7	11
Approximate value of assets under restraint at end of the year.	£2,979,072	£2,048,322	£2,490,305

Confiscation and Freezing Data – Other Criminal Conduct (POCL) (Source: Viscount's Department).

Year	2006	2007	2008
Number of new <i>saisies judiciaires</i>	6	5	2
Approximate value of assets restrained.	£14,958,756	£49,487,879	£3,697,899
Number of cases in which confiscations ordered.	1	3	0
Total value of confiscation Orders executed (amount recovered)	£12,193	£918,364	£0
Number of cases where assets remain under restraint at the end of the year.	18	14	16
Approximate value of assets under restraint at end of the year.	£41,602,728	£88,154,634	£103,698,362

Effectiveness:

209. The available statistical data covering the period between 2006 and 2008 with regard to *saisies judiciaires* and confiscation orders made under the DTOL show that reasonable but uneven number of *saisies judiciaires* were made in the relevant period, totaling 93. The number of confiscation orders totaled 94, with an increase in the number of confiscation orders issued in the 2007 period, but a decrease in 2008. Data for 2006–2008 for *saisies judiciaires* and confiscation orders made under the POCL, for other criminal conduct, show that a small number of *saisies judiciaires* were made in the relevant period, totaling 13 and ranging from two to six per annum. The

number of confiscation orders totaled four. The above data show that, while the number of actions taken under the provisions of POCL is smaller, the value of the property restrained and confiscated under the POCL is significantly higher. For the 16 POCL cases where assets remained under restraint at the end of 2008, seven involved charges of fraud or fraudulent conversion, four involved money laundering charges (two of these were combined with a fraud charge), and the remaining involved embezzlement, support of a criminal organization, illegal gambling and tax fraud, theft, corruption, copyright violations and Mafia association. The data reflects the complexity and serious nature of the investigative and prosecutorial work conducted under the IOFL by the Police and the AG, as discussed under Recommendation 27.

210. In most cases, the full amount ordered to be paid was actually paid. At the end of 2008, there were six cases where the confiscation orders remained outstanding. One involved GBP1.2 million and the other five a total of approximately GBP57,000. The authorities monitor the amounts restrained which are ultimately returned to the person whose account was restrained (or a foreign authority on the person's behalf) because no confiscation occurred, the person was acquitted, or a plea agreement is reached. The figures do not appear to differentiate, as would better serve analyzing effectiveness, situations in which a plea agreement provides for the forfeiture of the funds.

211. The Jersey seizure and confiscation legislative framework is generally adequate and reflects a clear awareness of the authorities of the importance of depriving criminals of their illegal assets. However, the authorities need to reinforce the legal framework to address the following issue in order to enhance effectiveness:

- The deficiencies in respect of the scope of the ML and FT offenses undermine the quality of the criminal confiscation regime;
- There is an restriction that equivalent value seizure is possible only after formal proceedings have been instituted or are about to be instituted;
- Provision should be made under the TL for restraint and confiscation of equivalent value.

2.3.2. Recommendations and Comments

- Jersey's laws should be amended to address the deficiencies affecting the scope of the ML and FT offenses and thereby also improve the quality of the criminal confiscation regime.
- Consideration should be given to providing for restraint of property and or its equivalent or corresponding value from the beginning of an investigation;
- In the case of matters arising under the TL, there should be provision for the restraint and confiscation of property of corresponding value.
- A more direct legal basis should be provided for the current 'informal freezing' or consent/nonconsent arrangement currently administered by the JFCU.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
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R.3	LC	<ul style="list-style-type: none"> • Deficiencies in ML and FT criminalization impact on the scope of criminal confiscation. • Failure to provide for corresponding value seizure before proceedings are about to commence has some potential to limit overall effectiveness. • No provisions to restrain, seize or confiscate property of corresponding value in the case of FT.
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2.4. Freezing of funds used for terrorist financing (SR.III)

2.4.1. Description and Analysis

Legal Framework:

212. Specific legislation on freezing suspected terrorist assets is found in the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 and the Terrorism (United Nations Measures) (Channel Islands) Order 2001.

213. TL 2002 contains additional legal measures against terrorism related assets, including terrorism financing. The Act provides for both criminal and administrative measures to restrain such assets in whatever form. TL 2002 contains provisions to seize and forfeit assets in connection with a criminal investigation or proceeding. They are addressed in Section 2.3 of this report.

Freezing Assets under UNSCR 1267 (c. III.1):

214. The UNSCR 1267 is implemented in Jersey through the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002, an Order-in-Council made in the U.K. under the United Nations Act 1946 (an Act of the U.K. Parliament) and extended to Jersey (Article 1(3)). The order designates listed persons. These are the persons listed by the UNSCR 1267 Sanctions Committee. The JFSC and the Chief Minister's Department circulate this list to stakeholders and place it on their respective websites. Besides prohibiting the supply or delivering of goods ("restricted goods") to persons designated by the UNSCR 1267 Sanctions Committee, it makes it an offense to make any funds available to or for the benefit of a designated person. The Order further provides for the freezing of funds through an administrative determination in situations where the Chief Minister's Department has reasonable grounds to suspect that funds are in any way held or under the control of a designated person (Article 8).

Freezing Assets under S/Res/1373 (c. III.2):

215. The Terrorism (United Nations Measures) (Channel Islands) Order 2001, an Order-in-Council made in the U.K. under the United Nations Act 1946 (an Act of the U.K. Parliament), gives effect to UNSCR 1373. Article 1(4) extends the Order to Jersey. It provides a freezing regime, similar to the one giving effect to UNSCR 1267. Article 5 makes it an offense to makes funds available to any person that is a terrorist and Article 6 gives the Chief Minister's Department as the licensing authority, notice to direct that funds are not made available to a particular person, except under the authority of a license, where the Chief Minister has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be involved in terrorism.

216. Jersey's list of persons and entities subject to the freezing sanctions is kept in line with the consolidated U.K. list which, inter alia, incorporates not only the UN designations for UNSCR 1267 but also the EU designations for UNSCR 1373. The Chief Minister's Department has as yet not seen any reason to issue its own additional list of suspected terrorists for designation under UNSCR 1373. This is because the Jersey authorities are not aware of any terrorists living in Jersey. Were such an additional list to become necessary, it would be drafted in consultation with the U.K. Any designation on the domestic list would presumably be based on information supplied by the JFCU or other law enforcement bodies. The Chief Minister's Department refers residents and businesses to the terrorism measures part of the U.K.'s consolidated list of financial sanctions targets, incorporating the UN and EU designations, which provides the basis for the operation of Articles 5 and 6 of the Terrorism Order 2001.

Freezing Actions Taken by Other Countries (c. III.3):

217. There are no statutory provisions, regulations or policies that set forth a procedure to be followed when there is a formal request from another jurisdiction to designate a particular person under the Jersey freezing mechanism.

218. However, prompt effect can be given to actions initiated under the freezing mechanisms of other countries under Article 6(1) of the Terrorism (United Nations Measures) (Channel Islands) Order 2001, provided the requisite suspicion is raised. This is because Article 6(1) of the Terrorism (United Nations Measures) (Channel Islands) Order 2001 allows the Chief Minister's Department to freeze funds that are held by persons that are not listed by the UN, EU, or U.K.

219. Jersey has not incorporated foreign terrorist lists directly into its domestic freezing regime other than through the consolidated U.K. list which contains an EU 1373 list. Foreign designations may be taken into account on a voluntary basis by the industry in their risk-based assessments. The JFSC expects relevant persons to make suspicious activity reports with respect to transactions if they involve persons that are listed in the United States on the OFAC list. Other foreign designations may be taken into account as part of the risk-based assessment for particular customer relationships, as indicated in Jersey's Handbook for Regulated Businesses. A match against a U.S. or other list would provide a ground for a suspicion to be reported to the JFCU.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

220. The Al-Qa'ida and Taliban Order 2002, and Terrorism Order 2001 define quite specifically the funds that are subject to freezing (See Article 2 each Order). The Al-Qa'ida and Taliban Order 2002 does not contain a reference to assets that are "indirectly owned or controlled" by the designated persons. In the case of the Al-Qa'ida and Taliban Order, reference is made to "associated persons" and, under the Terrorism Order to a person who commits, attempts to commit, participates in or facilitates the commission of terrorism, a person owned or controlled directly by such a person, or a person acting on behalf of, or at the direction of, such a person.

221. The TL does not contain any definition of funds, other than defining property as "all property whether movable or immovable, vested or contingent and whether situated in Jersey."

Communication to the Financial Sector (c. III.5):

222. The consolidated U.K. list, which, inter alia, reflects both the UN 1267 and EU 1373 lists, is updated automatically and immediately disseminated by the Chief Minister's Department by way of an automated subscription system that uses email. An email is forwarded to every financial institution in Jersey that subscribes to this system. A link to U.K. and U.S. sanction lists is also published on the JFSC website. There is a link on the Chief Minister's website.

223. In order to inform all Jersey residents, as well as relevant persons, of changes in sanctions, notices detailing revisions to the UN list published under UNSCR 1267 are published in the Jersey Evening Post, which has a high local circulation.

224. Jersey's authorities do not mandate a minimum time frame for financial institutions to compare the customer base against the U.K.'s consolidated list and U.S. list. Indeed some financial institutions have systems in place where their lists are automatically updated, via head office, and the system automatically checks the revised list against the bank's data base. Such prompt action is necessary because a financial institution commits a criminal offense where it makes funds available to any terrorist.

Guidance to Financial Institutions (c. III.6):

225. Useful guidance applicable to financial institutions and DNFBPs is given to those who may be holding targeted funds and other assets as to their obligations under the freezing mechanisms and this is published on the Chief Minister's Department website.

226. In the case of a positive match, the financial institution is required to not make the funds available and immediately report the matter to the licensing authority, being the Chief Minister's Department.

227. The Chief Minister's Department website also contains detailed information relating to UN and EU sanctions measures, and the legislation implementing them in Jersey. The website also includes a link to the U.K.'s consolidated list of financial sanctions targets.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7): Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

228. As Jersey has not initiated any listings under UNSCR 1373 but relies on the list disseminated by the U.K., it does not currently have procedures in place to deal with a request for a de-listing.

229. Article 6(3) of the Terrorism Order and Article 8(3) of the Al-Qa'ida Order provide the Chief Minister's Department with authority to revoke a freeze of any assets that are covered by a notice that has been issued under Articles 6(1) and Article 8(1) of Orders respectively. Thus Jersey is able to unfreeze any funds it has frozen under the Orders as necessary.

230. Article 6A of the Terrorism Order provides that a person whose funds are frozen may apply by representation to the Royal Court to have the direction to freeze his or her funds set aside. On such an application, the Court may do so. The same provision is contained in Article 8(7) of the Al-Qa'ida Order. These provisions are contained in the Orders which are available on the internet at www.jerseylaw.je and are thus publicly available.

Access to frozen funds for expenses and other purposes (c. III.9):

231. Access can be provided to funds frozen under the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002, for humanitarian purposes and basic expenses if a license or authorization is granted by the Bailiff or Attorney General, as provided for in Article 7.

232. Access can also be provided to funds frozen under the Terrorism (United Nations Measures) (Channel Islands) Order 2001, for humanitarian purposes and basic expenses if a license or authorization is granted by the Attorney General or the Chief Minister, as provided for in Article 5

Review of Freezing Decisions (c. III.10):

233. A review of a freezing decision is available under Article 8(7) of the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002. Where a direction has been given by the licensing authority under paragraph (1), any person by, for or on behalf of whom those funds are held may apply by representation to the Royal Court for the direction to be set aside, and on such application the court may set aside the direction.

234. Access can also be provided to funds frozen under the Terrorism (United Nations Measures) (Channel Islands) Order 2001, for humanitarian purposes and basic expenses if a license or authorization is granted by the Chief Minister's Department, as provided for in Article 5.

235. Access to frozen funds or assets necessary for basic expenses, payment of fees, expenses, service charges or extraordinary charges is sometimes agreed between the authorities and those whose assets are the subject of the *saisie judiciaire*.

236. In the absence of such agreement, a representation can be made to the Royal Court seeking an Order for such access. An example of such an application, albeit unsuccessful, is in re O'Brien [2003] JLR 1. Jersey in another context has had experience in releasing funds for humanitarian purposes and would follow a similar procedure here.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

237. All penal conservatory and deprivation measures of seizure and confiscation or forfeiture that apply with respect to any criminal offense can be applied also in respect of FT.

Protection of Rights of Third Parties (c. III.12):

238. There are several ways to protect bona fide third party rights. In particular, the licensing and authorization possibilities provided by the relevant UN orders, and those provided in the TL, Article 26(7), which provides for the affected third parties to make submission for consideration by the court, and paragraph 5 of Schedule 3 which empowers the court to discharge restraint orders following third party submissions.

239. Third parties may request a review of a freezing decision under Article 8(7) of the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002, which allows any person by, for or on behalf of whom those funds are held may apply by representation to the Royal Court for the direction to be set aside; and on such application the court may set aside the direction.

240. Under article 6(3) of the Terrorism (United Nations Measures) (Channel Islands) Order 2001, notices issued by the licensing authority may be revoked at any time. Such revocation could be triggered by an effected third party making representation to the licensing authority.

Enforcing the Obligations under SR III (c. III.13):

241. The UN Orders 2001 and 2002 provide for penalties that may run to seven years custody. Failure to comply with a freezing order issued under the TL can also result in penalties that may run to seven years custody.

242. In addition, regulatory authorities such as the JFSC can apply their own range of sanctions that could ultimately include revocation of a license. If the noncompliance could be interpreted as an act of supporting terrorism, criminal prosecution for FT could follow.

Analysis:

243. Jersey's implementation of UNSCRs 1267 and 1373 is closely linked to the U.K.'s implementation of these resolutions. Jersey automatically incorporates the U.K. lists in its resolution implementation regime. Jersey has not become actively involved in the U.K. decision-making processes with respect of designations and delisting.

244. Jersey implements UNSCR 1267 through the means noted above. In addition, although not yet used in practice, Jersey has an ability to designate persons and freeze their assets in conformity with UNSCR 1373 through the Terrorism (United Nations Measures) (Channel Islands) Order 2001.

245. The TL provisions and the specific UN Orders are the legal instruments that provide the basis in Jersey for an assets freezing regime. Although the bulk of the international criteria are covered, some issues, mostly of a formal nature, still need to be addressed:

- No formal procedure is in place to receive and assess requests based on a foreign request, as required by UNSCR 1373;
- In all cases, the definition of "funds" subject to freezing does not expressly refer to assets "jointly" or "indirectly" owned or controlled by designated or listed persons.

Effectiveness:

246. The authorities noted there is little evidence to suggest that there is terrorist property in Jersey. Consistent with that assessment, the Jersey authorities have not had occasion to freeze assets under UNSCRs 1267 and 1373 either on their own initiative or at the request of another state. Jersey has not received requests from other states to take action to freeze under the resolutions.

247. Effectiveness could not be evaluated as no information was provided regarding numbers of requests from other States and any action on them nor on numbers of freezing actions that have taken place in order to comply with UNSCRs 1267 and 1373.

248. The JFCU has received the following terrorism-related SARs . These figures, though modest, indicate a certain level of awareness and compliance by the industry.

SARs related to Terrorism (Source: JFCU)

Year	2006	2007	2008
Terrorism-related SARs	16	10	15

2.4.2. Recommendations and Comments

- The authorities should put in place a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373.
- The legal framework implementing the UN Resolutions should be amended to expressly extend the definition of ‘funds’ subject to freezing to cover assets ‘jointly’ or ‘indirectly’ owned or controlled by the relevant persons.
- The authorities should develop procedures to assess the effectiveness of their program to implement the UNSCRs and keep statistics regarding implementation.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	LC	<ul style="list-style-type: none"> • The authorities should put in place formal procedures to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373. • Definition of “funds” subject to freezing does not cover assets ‘jointly’ or ‘indirectly’ owned or controlled by the relevant persons.

Authorities

2.5. The Financial Intelligence Unit and its Functions (R.26)

2.5.1. Description and Analysis

Legal Framework:

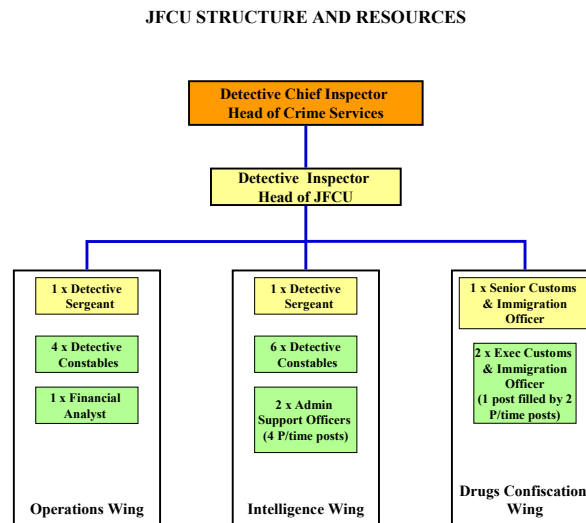
249. The legal basis for the suspicious activity reporting regime is found in Articles 32, 33, 34A, and 34D of the POCL, Articles 37, 38, 40 and 40A of the DTOL, and Articles 20, 22, and 23 of the TL, pursuant to which suspicions are to be reported to a Police or Customs officer. In practice all such reports are directed to the JFCU which is a joint unit comprised of officers of the Police and Customs.

250. In the case of the regulated sector, Article 21 of the MLO also provides for reports to be made by a Money Laundering Reporting Officer (MLRO) of the covered entity to a designated Police or Customs officer in a prescribed format that is set out in the Schedule to the MLO. Designation of Police and Customs officers for the purposes of this order is achieved by the issuing of public notices under Article 6 of the MLO, effectively designating officers who work in the JFCU.

Establishment of FIU as National Centre (c. 26.1):

251. The JFCU acts as the FIU for Jersey. The unit includes a number of Customs officers and is supported by civilian personnel, and performs administrative, analytical, and investigative functions. The JFCU is divided into three operational areas. The Intelligence Wing, the Operations Wing and the Drugs Confiscation Wing..

252. The following chart shows the organizational structure of the JFCU.



253. Once the JFCU receives SARs whether, through a hard copy or facsimile transmission, it can either consent to the financial activity mentioned in the SAR or not. This process is overseen by JFCU managers. The effect of a consent may be to provide a defense under Articles 32 and 33 of the POCL (and equivalent provisions in the DTOL and TL), and is referred to in the Handbook for Regulated Businesses (Paragraph 6.4.2). Conversely, the absence of a consent inhibits the service provider from completing any financial service for the customer for fear of committing a money laundering offense. Where the service provider fails to take steps when instructed by the customer in accordance with the mandate, as a result of the absence of a consent, that failure has the same effect as a freezing order. Of course, it could also expose the reporting institution to potential litigation from the affected customer.

254. The JFCU endeavors to provide consent to carry out an act (transaction or activity) on a best possible available service basis, with the majority of responses being issued within 24 to 48 hours. Consent is not granted initially in about two percent of SARs, of which approximately half are subsequently granted in a short period of time. The longest current nonconsent arrangement dates back to 2002 and relates to a protracted investigation and prosecutorial action.

255. There exist two avenues of appeal for person affected by a nonconsent decision. First a person may commence proceeding against the financial services provider for breach of contract and or mandate. Secondly, they may appeal through a general judicial review of administrative decision process in the Royal Court based in common law, at the initiation of the affected person or entity. In

such a review of the Police decision, the client would have to prove that no reasonable Police officer could withhold consent in the circumstances. In order to achieve this, a client would have difficulties unless they had access to all the information upon which the Police officer based his decision, which would be generally unavailable due to its protected nature.¹

256. SARs are received by the Intelligence Wing of the JFCU where the administrative support staff enters the details onto the JFCU Intranet Financial Intelligence System (IFIS), which was implemented in 2004 in response to a recommendation of the 2003 IMF assessment. SARs are risk rated in this process. As part of this process, the SAR is adjudicated by the management of the JFCU in order to arrive at a consent or non-consent decision on the SAR. This decision is communicated to the MLRO in writing and verbally if the matter is urgent, before being allocated to staff within the Intelligence Wing for further analysis. The JFCU has adopted an open plan office which enables staff in the Intelligence Wing to exchange information, opinions, and ideas when analyzing SARs.

257. SARs that warrant further attention are forwarded to the Operations Wing for investigative action. Both the JFCU and the Law Officers' Department are responsible for the investigation of money laundering and terrorist financing. While the Law Officers' Department has responsibility for the investigation of serious or complex fraud under the IOFL, both agencies work closely together in furtherance of such investigations.

258. The Drugs Confiscation Wing focuses on carrying out investigations under the provisions of the DTOL. It also acts as a conduit for information exchange and joint activity with Customs.

259. The Head of the JFCU reports directly to Head of Crime Services of the States of Jersey Police. Ultimately, the Chief Officer of Police retains operational and strategic control over the JFCU. Both the Police and the JFCU are represented on Jersey's AML/CFT Strategy Group and this group may make suggestions to the Chief Officer of Police with respect to the JFCU. The strategic direction of the Police, and more specifically the JFCU, is outlined in the 2008 Policing Plan which includes providing the Island's financial community with strong protection against money laundering and other financial crimes as one of two strategic policing priorities. Financial Crime Investigation accounts for five percent of the planned 2008 Police revenue expenditure.

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

260. The JFSC has issued Handbooks which set requirements and provide guidance on reporting. Further, the JFCU has issued separate and further guidance with respect to the process of compiling a SAR. Article 21(2) of the MLO requires reporting entities to use the disclosure form that the JFCU has developed and which is included as a Schedule to the MLO. The form is quite detailed (including

¹ In *Gichuru v. Walbrook Trustees* (2008) JLR 131, the Royal Court held that, where a person commenced proceedings against a financial services provider, it would not normally be the case the police should be convened to a private law action of that nature, nor would the police normally choose to seek leave to intervene. Further, in a private law action of that kind, it is the duty of financial institutions to contest the customer's claims and in those circumstances to lay before the Court all the available evidence which justifies their suspicion that the funds are the proceeds of criminal conduct. Indeed, there is a burden of proof on the customer to prove that the funds in question were not the proceeds of criminal conduct. (See paragraphs 30 to 34 inclusive of the Royal Court's judgment).

identification, supporting documents, reasons for suspicion etc.) and, if correctly completed, covers all relevant information necessary to conduct an initial analysis and keep reliable statistics. Further, both the JFCU and the JFSC AML Unit are active in providing advice and guidance to the regulated industry on both a formal and informal basis, including seminars and other training sessions, reminding MLROs and other personnel of the proper use of SAR forms, the procedures to be followed and the quality expected. The reporting is still done manually: an on-line system is currently being developed.

Access to Information on Timely Basis by FIU (c. 26.3):

261. As the unit comprises Police and Customs officers, the JFCU has full and direct access to all Police and Customs registers, and can also easily access the main U.K. and Interpol law enforcement information databases.

262. Financial and public administrative information of a non-public nature is directly available to the JFCU and obtaining such data normally requires a production order issued by the Bailiff, under Article 40 of the POCL, Article 42 of the DTOL, or Article 31 and paragraph 4 of Schedule 5 of the TL, if it is to be used in evidence. These orders are sought and granted on a timely basis. Collection of information held by financial institutions for intelligence purposes is possible on an informal basis. Some administrative registers, such as housing and social security are also available on a limited basis through the Joint Intelligence Bureau in line with the Data Protection (Jersey) Law 2005.

263. The Data Protection Law (Jersey) 2005 regulates how data may be processed in Jersey. Special provisions apply in Article 29 where information is processed for the purpose of the prevention and detection of crime and the apprehension of an offender.

264. Jersey is a member of both the Egmont Group and Camden Asset Recovery Inter-Agency Network ("CARIN") and is in a position to obtain timely information from these networks. Jersey is one of nine countries that sits on the steering group of CARIN.

265. The FIU also utilizes internet-based search engines and databases to assist in its analysis and information gathering (data-mining) and consults commercial databases such as World Check, "KYC360", and Credit Safe.

Additional Information from Reporting Parties (c. 26.4):

266. In the case of a report under Articles 32 or 33 of the POCL, Articles 37 and 38 of the DTOL, or Article 22 of the TL, the JFCU will engage directly with reporting parties to obtain sufficient information to make an informed decision as to whether to grant "consent" for an act (transaction or activity) to take place.

267. Failure by the reporting party to provide additional information may result in a delay or even refusal to grant "consent".

268. Additionally, under Article 21(3) of the MLO, a person who makes a report must provide the JFCU with such additional information relating to that disclosure as an officer of the JFCU may reasonably request and within such reasonable period as the officer may require.

269. When additional information is sought only for intelligence and/or analytical purposes, the Intelligence Wing of the JFCU is empowered to request further 'reasonable' information relating to a SAR under the provisions contained in Article 21(4) of the Money Laundering Order. Information outside such a request is then supplied on a voluntary and informal basis, and any such request cannot be enforced. It appears that regulated entities take a co-operative approach to such requests.

Dissemination of Information (c. 26.5):

270. All SARs are analyzed by the Intelligence Wing within the JFCU. The analysis mainly consists of checking the databases at hand, making further enquiries to complete the picture, and comparison with ML and FT typologies. Exchange of information with counterpart FIUs and conferring with the JFSC are important elements of this process. If the JFCU Intelligence Wing finds that a suspicion is grounded, the information is passed on to the Operations or Drug Operation Wing of the JFCU for investigation, as appropriate to the nature of the grounded suspicion.

271. Dissemination of the disclosed information by the JFCU is provided for by Articles 30 and 31 of the POCL, Articles 40C and 40D of the DTOL, and Articles 24B and 24C of the TL, both domestically and externally to Jersey.

Operational Independence (c. 26.6):

272. The head of the JFCU reports to the Head of Crime Services of the Police. The JFCU is a separate unit within the Police and operates with a degree of autonomy given its combined agency structure and its specialized role and function. The JFCU interacts effectively with other segments of the law enforcement community. JFCU personnel seconded from Customs, continue to work in partnership with their parent organization.

273. The relative size of the JFCU compared to its parent organizations and the investments made in the JFCU show the importance of its role for the authorities.

274. In cases of serious or complex fraud, the AG may take the lead by invoking his powers under the IOFL and, where he does so, JFCU officers will assist his Crown officers who will have the lead on the investigation, but which remains nonetheless, a criminal investigation.

275. The JFCU therefore has operational independence and autonomy, subject to the operational requirements and strategic objectives of both the Police and Customs. Operational independence is also subject to the requirements of the AG in the provision of assistance to his serious/complex criminal investigations conducted under the provisions of the IOFL.

Protection of Information Held by FIU (c. 26.7):

276. The JFCU office is situated within a part of the Police estate that is restricted to security pass holders only, who possess electronic swipe card access. Entry to the JFCU office requires a specific card access further to that required to access the main building.

277. All JFCU information is registered in the IFIS system on the Police secure computer server and can only be accessed by authorized personnel. All hard copy material is stored in secure areas which are alarmed outside of office hours.

278. Dissemination of information is covered by legislation (Articles 30 or 31 of the POCL, Articles 40C or 40D of the DTOL, or Articles 24B and 24C of the TL, and the Data Protection Law), together with internal JFCU policies and procedures. Police officers employed within the unit are also covered by Police Disciplinary Regulations covering the improper disclosure of information. Customs officers are Civil Servants and are subject to the Civil Service Disciplinary Procedures. Both operate under a code of conduct issued by the States, which offers guiding principles on integrity matters. Both also sign the Official Secrets (Jersey) Law 1952.

279. JFCU specific information, such as SARs and information from foreign FIUs, is also stored on IFIS. Access is restricted to the JFCU staff, FIU analysts and supervisors. It is shielded from direct access by other investigators by 'interest markers' held by the joint intelligence bureau where local criminality is suspected so that approaches to JFCU by other Police departments can be considered'. Any information release has to be cleared by the Head of the JFCU.

Publication of Annual Reports (c. 26.8):

280. The JFCU produces statistics on SAR information which are published by the Chief Officer of the Police as part of the quarterly and annual reporting process.

281. Periodic updates have been given on a number of occasions through a JFCU newsletter issued from time to time to all financial institutions and publicly available via the Police website.

282. Typologies are covered through a joint JFCU, JFSC, and Law Officers' Department publication - "Typologies from a Jersey Perspective". This was published in October 2008 and includes information on typologies and trends internationally and those which are identified as emerging within the industry locally. Typologies and trends are also fed back to industry on an ad hoc basis through lectures and presentations given by the JFCU and in joint presentations and seminars with the regulatory authorities.

Membership of Egmont Group (c. 26.9):

283. The FIU has been an active member of the Egmont Group since 1998.

Egmont Principles of Exchange of Information among FIUs (c. 26.10):

284. The JFCU is fully committed to the Egmont Group and its Statement of Purpose and its Principles for Information Exchange and exchanges information according to these principles. The JFCU contributes to the running costs of the Egmont Group Secretariat and has access to the Egmont Secure Web.

Adequacy of Resources to FIU (c. 30.1):

285. The JFCU is housed within the Police estate and use the IFIS system which is operated on the Police intranet, which in turn is supported by the overall Police budget. Whilst the JFCU generally operates with autonomy, the Chief Officer of the Police reserves the right to redeploy JFCU Police personnel to other matters to meet other organizational operational requirements. The Unit has its own vehicles at its disposal.

286. The current budget for the JFCU, including salaries and allowances is projected to be five percent of the budget for the Police. It includes budgets for the training and development of staff, IT systems and equipment. It also includes travel and expense allowances. The Head of the Unit controls the proper use of the budgetary resources. The JFCU can make a business case for additional funds on a case-by-case basis to both senior management of the Police and confiscation funds established under the POCL and DTOL..

Integrity of FIU Authorities (c. 30.2):

287. All positions within the JFCU are filled by Police officers, civilian employees of the Police, or Customs officers. High standards of vetting for the employees as well as immediate family members are undertaken before deployment anywhere within the Police or Customs is permitted.

288. Police officers have been vetted upon entry to the Police and qualifications checked. All officers and civilian employees are vetted by the Security Services and will have signed a declaration under the Official Secrets (Jersey) Law 1952 upon joining the organization.

289. Prior to officers being appointed to Customs, a criminal records check is undertaken. Following their appointment, all officers must swear an oath of office as per Schedule 2 of the Customs & Excise (Jersey) Law 1999 (as amended). In addition, all officers are required to be vetted to Security Clearance level. Security Clearance vetting is reviewed every ten years or when there is a change in personal circumstances.

290. The Police retains stringent disciplinary policies and procedures in place to deal with breaches of the Police Force (Jersey) Law 1974 and Police Discipline Code. The Police has its own internal Professional Standards Department which investigates any internally-generated concerns, as well as complaints from outside the Police.

Training for FIU Staff (c. 30.3):

291. Personnel recruited to the JFCU are primarily from experienced investigator backgrounds and have usually undergone criminal investigation training. They are subject to an application process which is evidence based, requiring them to show a competent level of skill in particular areas that are required for their role within the JFCU.

292. All Police and Customs officers are provided with funding and support to undertake the International Compliance Association Diploma in Anti-Money Laundering. Some of the other courses undertaken by JFCU staff include: the U.K. National Fraud and Financial Investigation Courses, training in FT from the U.K. National Terrorism Financial Investigation Unit, as well as local relevant courses and seminars

Statistics (applying R.32 to FIU):

293. Ad hoc statistics, available by reconstruction, are kept on the number of SARs, their sources, and on the grounds for suspicion. The figures for the period 2006–2008 are set out below and also in the analysis in this report of Recommendation 13. They do not indicate, however, the number of SARs that triggered an investigation. The number of cases pending further action by each area within the JFCU is indicated in the following analysis.

SAR Statistics – (Source: JFCU)

Disclosure Made Under	2006		2007		2008	
Drugs	132	12.8%	138	9.1%	139	9.9%
Crime	886	85.7%	1369	90.2%	1250	89.0%
Terrorism	16	1.5%	10	0.7%	15	1.1%
Total	1034	100.0%	1517	100.0%	1404	100.0%
Type of Business						
Accountant	9	1%	19	1%	12	1%
Other Enforcement	0		0		-	0%
Financial Advisor					1	0%
Investment/Fund Manager	36	3%	47	3%	34	2%
Lawyer	12	1%	14	1%	37	3%
Life Assurance/Insurance Company	7	1%	7	0.5%	5	1%
Money Service					2	1%
Banks	697	67%	980	65%	849	60%
Other	27	3%	39	3%	62	4%
Funds	30	3%	49	3%	73	5%
Stockbroker	-	0%	-	0%	1	0%
Trust Company	216	21%	362	24%	328	23%
Grounds For Suspicion						
Account Not In Keeping	80	7.7%	67	4.4%	75	5.3%
Cash Inward	80	7.7%	118	7.8%	98	7.0%
Cash Outward	59	5.7%	108	7.1%	49	3.5%
Court Order	14	1.4%	4	0.3%	16	1.1%
Due Diligence	1	0.1%	8	0.5%	17	1.2%
Due Diligence- Adverse	5	0.5%	10	0.7%	48	3.4%
Due Diligence - Failure to provide	52	5.0%	57	3.8%	24	1.7%
Due Diligence - Inadequate	7	0.7%	4	0.3%	17	1.2%
Forgery	21	2.0%	19	1.3%	21	1.5%
Fraud / False Accounting	38	3.7%	26	1.7%	53	3.8%
Group Information	31	3.0%	39	2.6%	34	2.4%
High Risk Area	17	1.6%	21	1.4%	22	1.6%
Highly Transactional	6	0.6%	-	0.0%	8	0.6%
Internet/Research	-	0.0%	-	0.0%	78	5.6%
Investigation of Fraud Order	-	0.0%	-	0.0%	3	0.2%
Layering	7	0.7%	8	0.5%	21	1.5%
Liaison Notice	60	5.8%	46	3.0%	59	4.2%
Media	86	8.3%	94	6.2%	56	4.0%
Other	71	6.9%	74	4.9%	91	6.5%
Other Defensive	2	0.2%	5	0.3%	10	0.7%
Police Enquiry	93	9.0%	151	10.0%	155	11.0%
Production Order	23	2.2%	40	2.6%	34	2.4%

Purchase / Surrender	-	0.0%	2	0.1%	2	0.1%
Repeat Disclosure	47	4.5%	34	2.2%	17	1.2%
Tax	159	15.4%	498	32.8%	301	21.4%
Third Party Information	74	7.2%	79	5.2%	56	4.0%
Transaction Support - Inadequate	1	0.1%	-	0.0%	17	1.2%
Transaction Support - Not Provided	0	0.0%	1	0.1%	8	0.6%
Transaction support immediate layering	-	0.0%	-	0.0%	4	0.3%
Unusual Forex	0	0.0%	4	0.2%	10	0.8%
Total	1034	100.0%	1517	100.0%	1404	100.0%

JFCU Work Items as at December 2008 (Source: JFCU).

JFCU Work Items	Intelligence Wing	Operations Wing	Drugs Confiscation Wing	Total
Active Work Items	360	141	55	556
Completed, Awaiting Management Review and Sign Off	801	11	90	902
Total	1,161	152	145	1,458

294. The vast majority of SARs relate to subjects, entities, and activity overseas. The feedback the JFCU receives in respect of intelligence packages disseminated overseas is very low, which is attributed to a number of factors including the time taken by overseas authorities to conduct investigations and the absence of an automated feedback process resulting in the JFCU being unable to effectively maintain statistics with respect to these disseminations. The FIU has implemented a new statistical collection process which commenced on January 1, 2009.

Effectiveness:

295. The statistics spanning a period of three years (2006–2008) show active reporting levels by the financial sector, ranging from 1,034 disclosures in 2006 to 1,404 in 2008. The disclosure numbers are roughly similar to other equivalent local jurisdictions.

296. Insufficient statistics prevent further analysis of the number of SARs resulting in an investigation by either the Operations Wing, Drugs Confiscation Wing, or the AG Law Officers' Department. However, active cases on hand indicate that the Intelligence Wing is effectively filtering and identifying cases warranting further investigation.

297. The number of SARs resulting in an investigation, with eighty active cases appears to represent an effective, if under resourced JFCU target development capability. The amounts of effective asset recovery (as noted in the analysis for Recommendation 3) indicate that the JFCU is recovering roughly one quarter of the maximum street value of drugs seized in Jersey. The Drugs

Confiscation Wing currently has seventy four active cases with a staff of four; therefore, when measured in terms of concrete prosecution results from the overall system, effectiveness is an issue.

298. A significant factor to take into account is that, considering the offshore nature of Jersey financial industry, the majority of disclosures relate to foreign predicate activity, with the proceeds coming to Jersey. Consequently the JFCU/FIU is to a great extent dependant on the assistance received from its counterparts abroad, which is not always forthcoming or does not add much relevant information. Also relevant to an analysis of effectiveness is the positive impact of the frequent dissemination of information by the JFCU/FIU to the competent authorities of other jurisdictions, to assist in their analysis.

299. Statistics indicate that 98 percent of SARs were responded to within 48 hours. There was, some industry comment that they would like greater feedback with respect to SARs they have submitted and a general recognition that this issue was linked to JFCU resource levels.

300. Delays are sometimes incurred where the JFCU has to depend on external sources, such as its foreign counterparts. These delays impact upon the informal freezing or consent or nonconsent process requiring the prior consent of the JFCU to release funds that are the subject of an SAR.

301. The prerequisite for improved effectiveness remains adequate staffing of the FIU function considering the amount of SARs that are active and or awaiting management sign off.

302. Overall, the JFCU is adequately performing its role as a key player in the AML/CFT system. It has developed a relation of trust and openness with the financial sector, which is also an important factor explaining the acceptable volume of SARs. The clear separation between the intelligence and the investigative side of the handling of the reports is particularly significant.

303. By contrast, the high number of active investigations, and ultimately the low numbers of prosecution, raises the issue of effectiveness. The fact that the JFCU makes relevant information readily available to foreign counterparts is a positive factor, but does not sufficiently address the low level of results from the domestic system. This is a challenge for the authorities as a whole and not just for the JFCU. Nonetheless the JFCU should examine possible new ways to enhance its performance in terms of cases for investigation and asset recovery.

2.5.2. Recommendations and Comments

- The Intelligence Wing of the JFCU should be adequately staffed to perform its functions effectively.
- The JFCU should issue periodic reports including statistics, typologies and trends and information on its activities.
- The JFCU should maintain comprehensive statistics on the work of the Intelligence Wing on matters relevant to the effectiveness and efficiency of systems for combating ML and FT.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
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R.26	LC	<ul style="list-style-type: none"> Resource constraints impacted on the effectiveness of the Intelligence Wing of the JFCU.
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2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)

2.6.1. Description and Analysis

Legal Framework:

304. The legal framework for the investigation and prosecution of ML and FT offenses and for related seizure and confiscation measures is provided by the POCL (non-drug crimes related ML), the DTOL (drug related ML), the TL (FT and related ML). The POC(CS)L provides for the seizure and civil forfeiture of cash where it is suspected to be ‘tainted’.

305. The Police Force (Jersey) Law 1974 and the PPCEL, covers their investigative powers and the conservatory measures taken during a Police investigation.

306. The IOFL provides investigative powers to the AG where there is a suspected offense involving serious or complex fraud, wherever committed.

Designation of Authorities ML/FT Investigations (c. 27.1):

307. The following law enforcement authorities are, generally or particularly, charged with the investigation of ML/FT offenses:

308. The Police is primarily responsible for the investigation of all offenses. Specialized units within the Police service deal with specific criminality areas, such as drug trafficking. All cases related to ML and FT are allocated to the Operations Wing of the JFCU, with the Drug Investigations Wing investigating drug trafficking-related ML.

309. The inherent powers of a Police constable in respect of stop and search, entry, search and seizure, arrest, and detention are set out in the Police Force (Jersey) Law 1974 and the PPCEL. Specific powers are conferred on Police officers by the POCL, DTOL, TL, and the POC(CS)L, or are supported by a court order.

310. Officers of Customs are empowered generally by provisions of the Customs and Excise (Jersey) Law 1999 to administer, investigate, and enforce the various provisions of the customs and excise legislation and other legislation in respect of “assigned matters”. Assigned matters means any matter in relation to which the Agent of the Impôts and other officers are for the time being required to perform duties in pursuance of any enactment, including the TL, the POC(CS)L, and the MLO.

311. Effectiveness considerations resulted in the establishment of the JFCU, comprising officers of Police and Customs. The unit is responsible for the investigation of financial crime, particularly ML and FT. Officers of the JFCU who are officers of the Police have the powers of a constable in respect of all offenses. Officers of the JFCU who are officers of Customs have the powers of a Police officer

under the POCL and the DOTL and the powers of a Customs Officer in respect of assigned matters, listed above.

312. Prosecution is primarily in the hands of the AG and his staff of prosecutors, four at present with the scope to hire in additional resources. Distinction is made between summary proceedings and proceedings in higher courts. Summary proceedings in the Magistrate's Court level may be handled by either a prosecutor or by a Centenier (member of the honorary police). Proceedings in higher courts are handled by a prosecutor from the Law Officers' Department, which would always handle ML and FT matters.

313. The Law Officers' Department provides legal advice and expert assistance in all financial investigations including ML and FT. There are currently three additional lawyers hired for the purpose of investigating and prosecuting AML matters.

314. The AG also intervenes and conducts investigations under the IOFL. In these cases the AG will provide resources and expertise and will contract external legal experts such as prosecutors and forensic accountants for the purposes of furthering an investigation under the IOFL.

315. The AG also issues warrants with respect to the use of special projects including the tapping of communication lines under the Regulation of Investigatory Powers (Jersey) Law 2005.

Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):

316. The Police Force Jersey Law 1974 provides a power to arrest. The power is not a duty and the exercise of that power can be deferred, postponed, or waived for the purposes of identifying persons involved in criminal activities or for evidence gathering. Deferring the arrest of suspected persons or seizure of criminal items or assets is a common law enforcement practice aiming at maximum effectiveness.

317. It is the responsibility of the officer in charge of any investigation to decide on arrests, which may entail allowing an illegal situation to continue in a controlled way. Postponement of arrest to achieve maximum results is not exceptional in drug trafficking cases. Accountability in this process is achieved in the Police generally, and within the JFCU specifically, through the use of a 'Major Crime Policy File' system.

318. The 'Major Crime Policy File' system requires that all major crime investigation decisions, including ones relating to the waiving of the arrest of suspects and the seizure of property are accountable and reviewable. Such decisions are recorded on a template which requires the nature of the decision to be outlined. Ongoing operational decisions relating to this entry are recoded in a major incident duplicate entry book. Both documents are accountable and are reviewed by Police management in the course of an investigation generally, and specifically on a case-by-case basis.

Additional Element—Ability to Use Special Investigative Techniques (c. 27.3); Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):

319. Measures are in place providing law enforcement or prosecution authorities with an adequate legal basis for the use of a wide range of special investigative techniques when conducting investigations of ML or FT. Key legislation in this area includes the provisions of the Regulation of Investigatory Powers (Jersey) Law 2005, Article 10 of which allows the interception of

communications on obtaining a warrant signed by the AG and the detailed provisions which provide for the authorization of surveillance and human intelligence sources, including directed and intrusive surveillance and covert human intelligence sources (undercover operations).

320. Controlled delivery of the proceeds of crime or funds intended for use in terrorism is not prohibited by Jersey legislation and is therefore permitted, as is the deferment of arrest, provided that the decision to do so is reasonable in all the circumstances. These have been used in Jersey in relation to ML cases.

321. No legislative protection from civil action by affected persons is provided to employees of financial institutions who co-operate with the Police when techniques such as controlled delivery are used. Current operational practice is that money deposited from abroad as part of a current ongoing controlled operation, is required to belong to the overseas investigative authority, with the tainted funds quarantined offshore by that investigative authority. Protection to employees of financial institutions, who co-operate with the Police when techniques such as controlled delivery are used, is provided by virtue of that fact the funds they deal with are not tainted and have a legitimate foreign law enforcement source. The AG has issued guidelines for the conduct of covert or undercover investigations in Jersey by overseas and domestic authorities, and all such actions require the AG's approval.

322. Officers of the JFCU have undergone training as financial investigators and specialize in investigating the proceeds of crime. They, together with legal officers of the Law Officers' Department focus on the investigation, seizure, and confiscation of the proceeds of crime.

Use of specialized cooperative investigative groups (c. 27.5):

323. As mentioned earlier, the use of temporary groups specialized in the investigation and prosecution of serious or complex fraud is provided for under the IOFL and is practiced regularly by the AG who hires specific additional resources in the form of investigators, prosecutors, and forensic accountants, to work in cooperation with the Law Officers' Department and Police.

Review of ML and FT techniques, trends and methods (c. 27.6):

324. Reviews of ML and FT techniques, trends, and methods takes place on a number of levels. The Police review this data when reporting on the JFCU in both its annual and strategic priority reporting process. These issues are examined at periodic meetings between the head of the JFCU and the AG, and further discussed at AML/CFT Strategy Group meetings. Continuous exchange of information with respect to techniques, trends, and methods occurs between the JFCU and JFSC.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

325. There are several legal provisions giving Police officers the power, through application to the Bailiff, to compel the production of materials and to search premises with respect to ML under Articles 40 and 41 of the POCL 1999, and the provisions of PPCEL 2003 Article 10 on searches and seizure apply. Article 41A of the POCL provides for the provision of financial information and account monitoring orders. Suspected money laundering, reporting, and tipping off offenses, as well as failure to comply with the MLO, may also be investigated under the PPCEL, as they fall within the definition of "serious offense" in Article 3(2)(b) of the PPCEL.

326. With respect to ML related to drug offenses, the production of material and the search of premises are provided for under Articles 42 and 43 of the DTOL. Article 44A of the DTOL also provides for the provision of financial information and account monitoring orders. Drug trafficking, money laundering, reporting, and tipping off offenses may also be investigated under the PPCEL, as they fall within the definition of “serious offense” in Article 3(2)(b) and (c) of the PPCEL.

327. With regard to FT, production and search powers and financial information and account monitoring orders are also available under Article 31 of the TL for the purpose of a terrorist investigation. By virtue of Article 3(2)(b), the PPCEL may also be used to investigate a number of suspected terrorist offenses.

328. Article 2 of the IOFL gives the AG special powers to obtain evidence without a court order in respect of serious or complex fraud, wherever committed. The AG has the power to require the production of evidence and it is an offense to refuse to comply. The AG may also apply to the Bailiff for the issuance of a search warrant if appropriate in such circumstances. This warrant is executed by a Police officer.

329. The powers outlined in the POCL and the DTOL above are also available to Customs Officers who are included within the definition of Police officers within the Laws

Power to Take Witnesses’ Statement (c. 28.2):

330. Police officers can take witness statements in respect of investigations and prosecutions. This forms part of their duty as a Police officer to ‘bring offenders with all due speed to justice’, as per Article 2 of the Police Force (Jersey) Law 1974.

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):

331. The JFCU is operationally independent and no instances of undue political influence or interference are on record. The Police comprises 245 full time equivalent officers of which 13 work in the JFCU, together with three Customs officers and three civilians. The Police is as a whole committed to fighting criminality, including ML and FT, and lists financial crime investigation as both a key service area and a strategic priority in the 2008 Policing Plan.

332. The Law Officers’ Department presently comprises four prosecutors dealing with serious crime and three other staff engaged in IOFL investigations and prosecutions.

333. The number and complexity of active cases within JFCU raises the issue of adequacy of resources. The Operations Wing has 141 active cases, and the Drugs Confiscation Wing has 55 active cases. Both the Operations Wing and the Law Officers’ Department are responsible for the investigation of money laundering and terrorist financing. Whilst the Law Officers’ Department has responsibility for the investigation of serious or complex fraud under the IOFL, both agencies work closely together in furtherance of such investigations. The Drugs Confiscation Wing is responsible for investigations relating to drug offenses. In both cases the existing resources are insufficient to properly and thoroughly investigate the existing active cases in a timely manner. This resources issue is linked to the issue of effectiveness.

Integrity of Competent Authorities (c. 30.2):

334. The integrity of officers within the JFCU is discussed under Recommendation 26. All officers within the Law Officers' Department, including those posts involved in the investigation of ML and FT, are subject to States' policies such as those contained in the States Human Resources Policy Manual, which apply to members of the public service. Officers are also subject to various statutory requirements, including a requirement to sign a declaration pursuant to the Official Secrets (Jersey) Law 1952.

Training for Competent Authorities (c. 30.3):

335. The JCFU has a combined investigative law enforcement and financial intelligence unit structure and its staff have received adequate training to investigate ML and FT in Jersey. An analysis is provided under Recommendation 26.

336. The Law Officers' Department frequently retains English counsel to assist on serious and complex fraud cases, which typically involve ML. Permanent members of staff also receive external training by attendance at various conferences, examples of which are the IFEX International Fraud and Financial Crime Conference; the Cross Border Crime Conference; the Chatham House Anti-Corruption Conference; the Evidence and Intelligence Conference; the Cambridge International Symposium on Economic Crime; and the annual Securities and Exchange Commission conference.

Additional Element (R.30) - Special Training for Judges (c. 30.4):

337. Judges receive no specific training on ML or FT.

Statistics (applying R.32):

338. Ad hoc statistics have been kept at the JFCU in respect of the number of investigations and prosecutions in relation of ML, number of convictions, and the value of confiscated property. No TL investigations were reported to the assessors. Statistical data provided was sourced through manual reconstruction. The JFCU implement a statistical collection system with effect from January 2009.

Number of Active Work Items. (Source: JFCU)

JFCU Work Items	Intelligence Wing	Operations Wing	Drugs Confiscation Wing	Total
Active Work Items	360	141	55	556
Completed, Awaiting Management Review and Sign Off	801	11	90	902
Total	1,161	152	145	1,458

Number and type of Convictions. (Source: JFCU)

Offense Convictions	2006	2007	2008	Total
Proceeds of Crime (Jersey) Law	-	3	-	3

1999.				
Transferring the proceeds of criminal conduct-DTOL	2	1	1-	3
Assisting another to retain the benefits of drug trafficking - DTOL	3	2	1	6
False Accounting, Common Law	-	2	-	2
Total	5	8	1	14

Estimated (Maximum) Value of Seized Drugs, Number and Value of DTOL Confiscation Orders and Cash Seizures. (Source: JFCU)

Item	2006	2007	2008	Total
Estimated Value of Drugs Seized	£3,300,000	£1,620,000	£1,300,000	£6,220,000
Number of Drug Trafficking Confiscations	21	40	34	95
Value of Drug Trafficking Confiscations	£1,100,738	£676,658	£105,411	£1,882,807
Number of Cash Seizures	1	-	4	5
Value of Cash Seizures	£99,611	-	£122,252	£221,863
Total Value of Seizures	£1,200,349	£676,658	£227,663	£2,104,670

339. The Police are unable to estimate what percentage of drugs being trafficked in Jersey they are intercepting. Therefore, the statistics above raise a possible issue of effectiveness with respect to conducting proceeds of crime investigations with respect to drug trafficking offenses.

340. The number of active cases currently with the Operations and Drugs Confiscation Wing is high compared to the staffing levels. In respect of the effectiveness of the ML and FT investigations, the effectiveness issues raised in relation with the JFCU Intelligence Wing are also relevant to an analysis of law enforcement aspects. Overall, the law enforcement authorities have a sufficient investigative legal arsenal at their disposal.

2.6.2. Recommendations and Comments

- The authorities should implement steps to improve effectiveness by seeking to increase investigative resources.
- Competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> • The JFCU should be adequately staffed to perform its investigative function effectively.

R.28	C	
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2.7. Cross Border Declaration or Disclosure (SR.IX)

2.7.1. Description and Analysis

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c.IX.1):

341. Customs is a dual-role agency with officers performing a dual customs and immigration function.

342. The Customs and Excise (Amendment No.6) (Jersey) Law 2008 was passed by the States in July 2008 and came in to force on January 9, 2009. Articles 37B and 37C provide that an officer may require a person entering or leaving Jersey, or exporting or importing goods to disclose cash or bearer negotiable instruments in excess of the prescribed amount, currently set at EUR10,000 or the equivalent in any other currency.

Request Information on Origin and Use of Currency (c. IX.2):

343. Articles 36G of the Customs and Excise (Amendment No.6) (Jersey) Law 2008 provides an officer with the power to ask questions with respect of cash and its intended use, require evidence to be produced to support information provided, and further record the questions and responses.

344. Article 37D of the Customs and Excise (Amendment No.6) (Jersey) Law 2008 provides criminal offense provisions for persons refusing to declare when required to do so, or making a false declaration.

Restraint of Currency (c. IX.3):

345. Customs and Police officers are empowered under the POC(CS)L throughout Jersey and may seize any cash based on grounds for suspecting that it is tainted. Cash is defined to include bearer negotiable instruments. Tainted cash relates to cash that is used in, or intended to be used in, unlawful conduct; or obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.

346. Cash seized may be subject to the civil forfeiture provisions contained within the legislation.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4): Access of Information to FIU (c. IX.5):

347. Where tainted cash is seized under Article 4(1) of the POC(CS)L, the officer takes custody of the cash and is required to provide a receipt to the person in whose possession or on whose premises the cash was found, specifying the amount, denominations and currency of the cash.

348. The officer is required as a matter of procedure to provide the JFCU, whose staff includes Customs officers, a full report of the cash seizure.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

349. Customs coordinates its activities with those of the Police Special Branch and also with the JFCU. This coordination is enhanced by the placement of Customs officers within the JFCU.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

350. Customs officers within the JFCU operate within guidelines issued by the AG in respect of the sharing of intelligence collected through SARs with overseas law enforcement and regulatory bodies.

351. Jersey is a cooperating jurisdiction and will provide evidential assistance to foreign jurisdictions in response to formal letters of request made to the AG. Officers will also cooperate with foreign law enforcement agencies by virtue of the Criminal Justice (International Co-operation) (Jersey) Law 2001.

352. On a more general note Customs will freely exchange intelligence with U.K. agencies, in particular, U.K. Serious Organised Crime Agency (SOCA), HM Revenue Customs, and the U.K. Border Agency. Any exchange of intelligence will be in compliance with the Data Protection (Jersey) Law 2005.

353. Article 6(2)(a) of the Customs and Excise (Jersey) Law 1999 allows the Agent of the Impôts to cooperate with other Customs services on matters of mutual concern.

354. Article 6(2)(c) of the same law allows for the arrangements to be put in place with EU member states for the exchange of information to prevent/detect fraud/duty evasion against their Customs laws.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

355. Customs as a matter of practice will consider notifying the relevant authority upon the discovery of gold, precious metals or stones, and has actively exchanged this information in the past

Safeguards for Proper Use of Information (c. IX.13):

356. In line with current practice, any exchange of intelligence will be in compliance with the Data Protection (Jersey) Law, 2005.

2.7.2. Recommendations and Comments

- Jersey should proceed to implement the newly-established disclosure system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering and terrorist financing.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
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SR.IX	LC	<ul style="list-style-type: none">• Not yet possible to demonstrate effectiveness of newly-established system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.
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3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1. Risk of money laundering or terrorist financing

357. The nature of the financial sector business conducted in or from Jersey creates a material vulnerability to being used in the layering and integration stages of money laundering schemes. Some characteristics of the Jersey financial system point to an elevated vulnerability to abuse for ML or FT purposes. While in reality not all of this business is high-risk, much of it would fall within the range of categories suggested by the FATF Methodology as examples of higher-risk business, including as follows:

- A substantial proportion—believed to be around 90 percent in some sectors—of customer relationships and of financial service business conducted are on a non face-to-face basis for nonresidents of Jersey;
- In many cases the business relationship is established through intermediaries or introducers (Jersey or foreign) that are subject to varying levels of regulation, depending on their origin. Subject to certain controls, Jersey financial institutions are permitted to rely on the intermediaries or introducers to conduct CDD on their behalf. However, in general the CDD evidence is independently checked and CDD tests sometimes conducted again by the Jersey financial institution, employing a risk-based approach;
- Financial services provided include private banking facilities for nonresidents; and
- The use of legal persons and arrangements such as trusts is prevalent, both as asset-holding vehicles and as part of more complex structures that have the potential to create difficulties for Jersey financial institutions on occasion in accurately identifying the customer and the ultimate beneficial owner or controller.

358. This environment, designed to attract financial services business and employment to Jersey, brings with it a material risk of financial crime, typically emanating from other jurisdictions and seeking to avail of the financial services available in Jersey.

359. In response, the authorities have adopted a comprehensive risk-based approach to the implementation and supervision of AML/CFT preventive measures. In particular, the JFSC has required each financial institution to develop its own set of risk-based policies and procedures, which are considered by the JFSC as part of its onsite examinations. Indications regarding the depth and quality of the work conducted by the financial institutions in implementing the risk-based approach were mixed. The JFSC was requiring a number of the institutions to conduct further analysis and develop a deeper understanding of the risks they faced and more meaningful mitigating policies and procedures.

Legal framework

360. Since the last IMF AML/CFT assessment of Jersey in 2003, the authorities have revised and expanded significantly the legislative basis for AML/CFT regulation and the breadth and scope of measures in force, in response to the recommendations of the 2003 assessment report and to reflect the substantial changes in the FATF Recommendations, as revised in 2004. The current provisions (including amendments that came into effect during the on-site visit or shortly thereafter) are outlined below and analyzed in detail in sections 3 and 4 of this report.

361. Under the 2004 Assessment Methodology for the FATF Recommendations, an asterisk applied to a criterion indicates that the relevant measures must be in law or regulation. To qualify as such, the requirements must have been issued or authorized by a legislative body and be shown to impose mandatory, enforceable, and sanctionable requirements. This is relevant to many of the requirements under Recommendation 5, as well as all of Recommendations 10 and 13. The requirements in respect of the remaining FATF Recommendations must, at a minimum, be specified in "other enforceable means," defined by the FATF Methodology as measures issued by a competent authority and shown to be mandatory, enforceable, and sanctionable. The following paragraphs set out the laws, regulations, and, as applicable, other enforceable means taken into account for the purposes of this assessment.

362. The primary legislative foundation for customer due diligence (CDD) and other AML/CFT preventive measures in Jersey is the POCL, which defines money laundering and tipping-off offenses and the offense of not reporting suspicious transactions, deals with confidentiality and provides exceptions to enable disclosure in certain restricted circumstances, and sets forth (as a Schedule) the list of business activities subject to the preventive measures.² For purposes of this assessment, the POCL, having been adopted by the legislative body of Jersey and sanctioned by the Privy Council, constitutes primary legislation.

363. The POCL also in Article 37(1) authorizes the Minister for Treasury and Resources (the Minister) to issue Orders prescribing measures to be taken (or not taken) "by persons who carry on financial services business for the purposes of preventing and detecting money laundering." Pursuant to the POCL the Minister issued the MLO, which contains detailed provisions addressing most of the elements of the FATF Recommendations, including CDD measures and recordkeeping and reporting requirements. The MLO is secondary legislation and is accepted for the purposes of this assessment as "law and regulation" within the FATF definition as it:

- was issued under a specific power granted in primary legislation to issue regulations, including explicitly in relation to the prevention and detection of money laundering;
- contains mandatory provisions, which are enforceable by the JFSC and law enforcement agencies and subject to the sanctions as set forth in the POCL; and

² The POCL defines "money laundering" as conduct that is an offense under its relevant provisions as well as under the relevant articles of the DTOL or the TL. Thus, the term "money laundering" when used by the Jersey authorities includes terrorist financing.

- was laid before the States³ in the manner required by Jersey law.⁴

364. The MLO generally applies to “relevant persons,” which are defined in Article 1(1) as persons carrying on a “financial services business” in or from within Jersey, or a Jersey legal entity carrying on such a business anywhere in the world. A “financial services business” is defined in Article 36 of the POCL to mean a business described in Schedule 2 to the POCL. Schedule 2 is composed of two parts. Part A comprises the financial services businesses that are prudentially supervised by the JFSC under the regulatory laws it administers, and would all (except trust company business) fall within the definition of “financial institution” in the Glossary to the FATF recommendations: banking under the Banking Business (Jersey) Law 1991 (BBJL); insurance business under the Insurance Business (Jersey) Law 1996 (IBJL); collective investment funds and functionaries under the Collective Investment Funds (Jersey) Law 1988 (CIFL); and the investment business, trust company business, money service business, and fund services business under the FSJL. These businesses are referred to in the MLO as “regulated businesses” and the persons who conduct the business, defined in the MLO as “regulated persons,” constitute a subset of relevant persons under the MLO. Regulated persons are specifically referred to in the MLO only with respect to certain concessions from CDD requirements discussed in relation to Recommendation 5 below. Part B of Schedule 2 of the POCL includes the businesses that fall within the FATF definition of DNFBPs, as well as businesses that provide “other services.” This is a “catch-all” category that comprises the business of providing any of the financial activities contained in the Glossary of the FATF Recommendations, where the business is not otherwise included in Schedule 2.

365. The following table sets forth the activities contained in the FATF Glossary cross-referenced to where that activity is covered in Schedule 2:

Acceptance of deposits and other repayable funds from the public	Part A – 1 Part B – 7(1)(a)	Deposit-taking business as defined in Article 1 of the BBJL Acceptance of deposits and other repayable funds from the public
Lending	Part B – 7(1)(b)	Lending
Financial leasing	Part B – 7(1)(c)	Financial leasing
Transfer of money or value	Part A - 4 Part B – 7(1)(d)	Transmitting or receiving funds by wire or other electronic means - included in the definition of financial service business (Article 2(9) of the FSJL - money service business). No reference to value.

³ The Assembly of the States of Jersey (the States) is the parliament

⁴ Provisions addressing the requirements of SR VII are contained in the Community Provisions (Wire Transfers) (Jersey) Regulations 2007, which were enacted by the States, contain mandatory provisions that are enforceable through criminal or administrative sanctions, and constitute primary legislation.

		Money transmission services
Issuing and managing means of payment	Part B – 7(1)(e)	Issuing and administering means of payment
Financial guarantees and commitments	Part B – 7(1)(f)	Guarantees and commitments
Trading in: money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; and commodity futures trading	Part B – 7(1)(g) Part A - 4	Trading in: money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; and futures and options (financial and commodity) Dealing in investments - included in the definition of financial service business (Article 2(2) of the FSJL - investment business)
Participation in securities issues and the provision of financial services related to such issues	Part B – 7(1)(h) Part A - 3	Participation in securities issues and the provision of services related to such issues The business of being a functionary as defined in Article 1 of the CIFJL Underwriting securities – included in the definition of financial service business (Article 2(2) of the FSJL – investment business)
Individual and collective portfolio management	Part B – 7(1)(k) Part A - 4	Portfolio management and advice Undertaking discretionary investment management - included in the definition of financial service business (Article 2(2) of the FSJL - investment business)
Safekeeping and administration of cash or liquid securities on behalf of other persons	Part B – 7(1)(l)	Safekeeping and administration of securities
Otherwise investing, administering or managing funds or money on behalf of other persons	Part B - 7(1)(n)	Otherwise investing, administering or managing funds or money on behalf of third parties
Underwriting and placement of life insurance and other investment related insurance	Part A - 2	Long-term business as defined in Article 1(1) of the IBJL
Money and currency changing	Part A - 4	A bureau de change - included in the definition of financial service business (Article 2(9) of the FSJL - money service business)

366. The list in Schedule 2 of the POCL is subject to numerous exceptions, which is due to the very broad definitions that are used in the regulatory laws referred to above to define collective investment funds and fund functionaries, deposit-taking business, insurance business, and financial

service business. Some of the activities that are exempted from the scope of prudential regulation have also been exempted from Schedule 2 of the POCL, based upon one of the following rationales: (1) because they have been determined to be of inherently low ML risk, based upon an assessment by the JFSC; (2) because there is no person resident in Jersey to apply the requirements to⁵; (3) in order to avoid duplicative obligations (i.e., another Jersey entity that provides a service to the exempted entity is subject to AML regulations); or (4) the exempted person acts only as principal for a connected person or company (i.e., the exempted person conducts no business with the public). Based upon a review of Schedule 2 (including the exemptions and the base for each) and discussions with Jersey authorities, the assessors have concluded that the scope of coverage (including consideration of the exemptions) is in all material respects consistent with the FATF definitions of “financial institution” and “DNFBP”, and are satisfied regarding the adequacy of the process and risk analysis of the Jersey authorities for determining the exemptions and the reasonableness of its conclusions. Some examples of these exemptions are set forth below.

- The person carrying on the business is outside Jersey and subject to obligations in another jurisdiction equivalent to the obligations imposed by Jersey, e.g., the National Savings Bank of the U.K. (Article 8(2)(c) of the BBJL) and Lloyd’s of London (Article 5(5)(a) of the IBJL).
- The nature of the activity that is conducted presents a lower risk, e.g. the States and central banks of the EU (Article 8(2)(a) and (b) of the BBJL), a trade union (Article 5(5)(a) of the IBJL), and recruitment agents (paragraph 18 of the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000).
- The activity is not offered to the public, e.g. Article 1 of the Insurance Business (General Provisions) (Jersey) Order 1996 and investment advice between directors (paragraph 8 of Schedule 2 of the FSJL).
- The activity is administered by a prudentially supervised person that is subject to AML/CFT obligations itself, e.g. a private trust company business (paragraph 4 of the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000).

367. To supplement the POCL and the MLO, the JFSC has issued the Handbook for Regulated Businesses. The stated objectives of the Handbook for Regulated Businesses include, among others, to outline the requirements of the POCL, the MLO, and other primary and secondary legislation imposing anti-money laundering and counter terrorism financing obligations in Jersey, and "to set out the Commission’s requirements--to be followed by all relevant persons that are regulated by the Commission" pursuant to its regulatory laws. The Handbook for Regulated Businesses contains Statutory Requirements (which restate requirements contained in the POCL, MLO, or other primary or secondary legislation), Regulatory Requirements, and Guidance Notes. Following careful consideration, the assessors have concluded that the Regulatory Requirements contained in the

⁵ In some cases, the exempt person is a non-Jersey institution known to the JFSC that is subject to equivalent regulation to that provided by Jersey. In other cases, the exemption applies where a Jersey resident has, e.g., purchased a product from a non-Jersey entity that is not present in Jersey nor registered (nor required to register) with the JFSC, so there is no one in Jersey to attach an obligation to.

Handbook for Regulated Businesses should be accepted as “other enforceable means” (OEM) for the purposes of this assessment, on the following basis:

- The Handbook for Regulated Businesses states (in Paragraph 10 of Section 1) that the Regulatory Requirements set forth how a “person must meet the Statutory Requirements” and that “failure to follow” these requirements “may attract regulatory sanction.” In addition, the Regulatory Requirements (like the Statutory Requirements) “are described using the term **must**, indicating that these requirements are mandatory.” (Paragraph 12 of Section 1)
- The Handbook for Regulated Businesses was originally issued by the JFSC pursuant to its powers under Article 8 of the Financial Services Commission (Jersey) Law 1998 (“JFSC Law”), the law that establishes the JFSC as the supervisor of “regulated persons” and that grants it very broad powers to do anything “that is calculated to facilitate,” or “incidental or conducive to” the performance of any of its functions, and under provisions for Codes of Practice to be issued under the regulatory laws. This basis for the JFSC’s authority to issue enforceable requirements specific to AML/CFT was augmented in 2008 by the enactment of the SBL, which provides for one or more supervisory bodies to monitor and ensure compliance by all persons subject to Schedule 2 of the POCL (relevant persons) with legislation to prevent money laundering and terrorist financing. Article 22 of the SBL authorizes a “supervisory body” (which includes the JFSC) to prepare and issue “Codes of Practice for establishing sound principles for compliance with this Law and anti-money laundering and counter-terrorism legislation by persons in relation to whom that body has supervisory functions.” Article 8 of the SBL gives the supervisor broad powers to examine supervised persons, and to require the supervised person to supply information and answer questions. Thus, the assessors conclude that the Regulatory Requirements in the Handbook for Regulated Businesses “set out enforceable requirements.”
- The SBL also provides a range of sanctions for noncompliance. Article 26 authorizes a supervisor to issue a public statement concerning a person that appears to have committed a contravention of any Code of Practice. Article 23 provides that, if a supervised person has failed to comply with any Order or any Code of Practice, the supervisor may “give ... such directions as it may consider appropriate, ...” including imposing a prohibition, restriction or limitation, requiring the removal of a person, and requiring the ceasing of operations and winding up of a business. Article 18 authorizes a supervisor to revoke the registration of a person that is regulated under the SBL for noncompliance with any Code of Practice (in addition to identical provisions in each of the regulatory laws under which regulated persons are registered. The assessors view this range of possible sanctions as largely effective, proportionate, and dissuasive.

368. The Regulatory Requirements, thus, set out enforceable requirements with sanctions that can be imposed by the JFSC for noncompliance, and are issued by a competent authority (the JFSC).⁶ Although no sanction for noncompliance had been applied at the time of the on-site visit, the Handbook for Regulated Businesses was issued in February 2008 (and revised in October 2008), and

⁶ The Handbook also contains “Guidance Notes,” which present ways of complying with the Statutory or Regulatory Requirements, and are not considered OEM for purposes of this assessment.

the SBL has only been in effect since September 2008. With regard to the practical application of these measures, the assessors also noted that recent management letters written to financial institutions following on-site examinations conducted by an accounting firm on behalf of the JFSC contained references to “requirements” set forth in the Handbook for Regulated Businesses.⁷ The assessors also found in discussions with financial institutions that they clearly view the Regulatory Requirements as enforceable obligations.

3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1. Description and Analysis

General description of relevant provisions

369. Under Article 13 of the MLO, CDD measures are required when: establishing a business relationship; carrying out a one-off transaction (defined as a transaction over EUR15,000 - except for bureaux de change and money transmission activities where the threshold is EUR1,000); there is suspicion of ML or FT; or there are doubts about the veracity or adequacy of previously obtained identification data. However, verification of identity may be completed after the establishment of a business relationship provided that: (a) it is completed as soon as reasonably practicable thereafter; (b) it is necessary not to interrupt the normal conduct of business; and (c) there is little risk of ML occurring. Under Article 14 of the MLO, if measures cannot be completed, then no relationship may be formed or one-off transaction conducted, or, in the case of an existing relationship, the relationship shall be terminated.

370. Articles 3 and 13 of the MLO require a relevant person to: identify and verify the customer; determine whether or not the customer is acting for a third party, and, if so, identify that third party; where the third party is not an individual, understand the ownership and control of that third party; identify (and take reasonable measures to verify) each individual who is that third party’s beneficial owner or controller; in respect of a customer that is not an individual, identify any person purporting to act on behalf of the customer and verify the authority of any person purporting to so act; understand the ownership and control structure of that customer and the provisions under which the customers can enter into legal arrangements; identify (and take reasonable measures to verify) the individuals who are the customer’s beneficial owners or controllers; obtain information on the purpose and intended nature of the business relationship or one-off transaction; scrutinize transactions; and keep documents, data or information obtained up to date.

371. Article 11 of the MLO provides for policies to support the above to have regard for the degree of risk of ML, and to provide for the identification and scrutiny of: complex or unusually large transactions and unusual patterns of transactions which have no apparent economic or visible lawful purpose; and determination of business relationships and transactions connected with countries and territories which do not, or insufficiently, apply the FATF Recommendations.

⁷ The management letters referred to “requirements” contained in both the “Regulatory Requirements” and “Guidance Notes” sections of the Handbook, indicating that there may be some confusion regarding the effects of different sections of the Handbook that needs to be clarified by the JFSC.

372. Under Article 15 of the MLO, enhanced measures must be applied in higher risk circumstances, including where a customer has not been physically present for identification purposes, correspondent banking relationships, and PEPs.

373. Under Articles 16 to 18 of the MLO, reduced simplified measures may be applied—in certain prescribed cases where ML risk is considered to be low (except where there is suspicion of ML or FT).

374. The term "money laundering" is defined in the POCL to mean conduct that constitutes an offense under the relevant articles of the POCL, the DTOL, or the TL. Thus, the term "money laundering, when used in the POCL or the MLO, includes both money laundering and terrorism financing.

375. While the version of the MLO that applied at the time of the assessment had only recently been brought into force (February 2008), the assessors took into account in assessing the effectiveness of implementation of the CDD measures that the financial institutions had been engaged in extensive consultations with the JFSC on the MLO's provisions and had access to the drafts over an extended period. Financial institutions met during the on-site visit confirmed that they had adopted the updated procedures based on the consultation drafts from early 2007 in some cases. While most of the institutions interviewed were still engaged to varying degrees in upgrading their CDD procedures and customer database information, particularly for their existing client base, the assessors accepted that the updated requirements of the MLO were already at an advanced stage of implementation. Moreover, the JFSC was already in the course of conducting on-site examinations in relation to the new requirements with particular focus on the application by the financial institutions of the risk-based approach.

Prohibition of Anonymous Accounts (c. 5.1):

376. Article 23B of the MLO (effective November 7, 2008) explicitly prohibits a relevant person from establishing an anonymous account or an account in a name it knows or suspects to be fictitious. Even before this explicit prohibition, the establishment of an anonymous account would have been contrary to requirements of Article 13 of the MLO, under which a relevant person must undertake CDD measures on all accounts, including identification and verification of identity, and information and documents must be kept in line with Articles 19 and 20 of the MLO. The assessors understand that anonymous accounts would have been contrary to the applicable Jersey CDD requirements in effect prior to the current MLO.

377. According to the JFSC, it is possible that trust and company service providers may have permitted anonymous or fictitious name accounts prior to their regulation in 2000 but since that time they believe such practices have ceased, and that there are no such accounts at this time. The assessors have not found any indication that such accounts exist.

378. The use of numbered accounts is not prohibited in Jersey. The JFSC informed the assessors that they had identified a small number of banks utilizing numbered accounts and some offering hold mail services. According to the FATF Methodology, when numbered accounts exist, institutions should be required to maintain them in such a way that full compliance can be achieved with the Recommendations. The assessors determined that, although there are no requirements in the MLO

specifically applicable to numbered accounts, the CDD provisions referred to above appear adequate to achieve full compliance with the Recommendations with regard to any such accounts,

When is CDD required (c. 5.2):

5.2(a)

379. The requirement to undertake CDD measures is set out in secondary legislation. Article 13(1)(a) of the MLO requires financial institutions and other relevant persons to apply identification measures before the establishment of a business relationship. There is a concession for completion of identification as soon as reasonably practicable after establishment of a business relationship that is discussed below. The establishment of new business relationships based on information received from introducers is addressed in the analysis of Recommendation 9.

5.2(b)

380. With regard to occasional transactions, Article 13(1)(a) of the MLO also requires the application of CDD before carrying out a “one-off transaction,” which is defined in Article 4 of the MLO as any transaction carried out by relevant persons other than in the course of a business relationship, amounting to not less than the applicable threshold of EUR15,000 (other than for a money service business or casino); EUR1,000 in the case of a money service business (including bureau de change and money transmission activities); and EUR3,000 in the case of a casino. The definition includes two or more linked transactions, where it either appears at the outset or later comes to the attention of the person handling the transactions that they are linked and the appropriate threshold is met in the aggregate. Article 13(5) of the MLO provides that, in the event that it later comes to the attention of the person handling a transaction that it is linked to an earlier transaction, the relevant person must apply identification measures as soon as reasonably practicable. Financial institutions interviewed confirmed to the assessors that they had in place procedures to implement the above requirements.

5.2(c)

381. The Jersey authorities chose to address the regulation of wire transfers by implementing legislation that is based on European Regulation 1781/2006 on Wire Transfers: the Community Provisions (Wire Transfers) (Jersey) Regulations 2007, as amended (the WTR).

382. Payment service providers are required, before transferring funds, other than from an account, to verify the complete information on the payer on the basis of documents, data, or information obtained from a reliable and independent source, where the amount exceeds EUR1,000 (or the transaction is carried out in several operations that appear to be linked and together exceed EUR1,000). The exemption threshold does not apply where there is a suspicion of money laundering. (WTR Regulation 6(4)).

383. The measures applicable to wire transfers are analyzed in more detail later in this section when addressing SR.VII, including as regards the effectiveness of implementation of the required measures.

5.2(d)

384. Financial institutions and other relevant persons are required by Article 13(1)(c)(i) of the MLO to apply identification measures when they suspect money laundering which is defined to include both money laundering and terrorism financing offenses regardless of any thresholds.

385. Relevant persons are required pursuant to the MLO to apply CDD measures if they suspect money laundering (except for the situation described in the following paragraph), regardless of any available exemption. The exemptions from the application of full CDD measures are contained in Articles 16, 17, and 18, are not applicable if there is a suspicion of money laundering or terrorist financing. (MLO Articles 16(8), 17(3), and 18(9)).

386. Under Article 14(6) of the MLO, identification procedures need not be applied where there is a suspicion of money laundering, where a relevant person has made a report to the JFCU and has received consent from an officer of the JFCU not to do so. The JFCU may consider providing such consent if it is concerned that a customer may be alerted to the relevant person's suspicion or it is satisfied that a relevant person already holds sufficient information on its customer (and where the application of identification measures would not provide additional CDD information). The assessors understand that the procedure authorized by Article 14(6) is rarely used. As discussed in the analysis of Recommendation 13, financial institutions generally expressed satisfaction with the operation of most aspects of the suspicious transaction reporting system and confirmed to the assessors a strong awareness of their obligations in that regard.

5.2(e)

387. Article 13(1)(c)(ii) of the MLO requires that a relevant person apply identification measures when it has doubts about the veracity or adequacy of documents, data, or information previously obtained under CDD measures.

Identification measures and verification sources (c. 5.3):

388. Article 13(1) of the MLO requires a relevant person to apply identification measures before the establishment of a business relationship or before carrying out a one-off transaction. Article 3(4) of the MLO states that identification of a person means finding out the identity of the person, including the person's name and legal status, and obtaining evidence, on the basis of documents, data, or information from a reliable and independent source (added by amendment to the MLO effective November 7, 2008), that: (a) is reasonably capable of verifying that the person to be identified is who the person is said to be, and (b) satisfies the person responsible for the identification of a person that the evidence does establish that fact. Article 3(5) states further that the measures for identifying a person must include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve money laundering, including obtaining appropriate information for assessing that risk.

389. The Handbook for Regulated Businesses states as a regulatory requirement that a relevant person must collect relevant identification information on an individual (Section 4.3.1), and must verify the identity of the individual, and take reasonable measures to re-verify following a change of identity, such as following marriage, change of address, or change of nationality (Section 4.3.2). The Handbook for Regulated Businesses states in Guidance Notes that a relevant person may demonstrate collection of relevant identification information where it obtains name, residential address, and date

of birth (for all customers), and also place of birth, nationality, sex and government-issued identification number (for standard and higher risk customers). The Handbook for Regulated Businesses states in Guidance Notes in these Sections that a relevant person may demonstrate compliance with verification of an individual (for lower risk) if it verifies name and either residential address or date of birth, using at least one verification method, and (in the case of standard risk) address and date of birth, place of birth, nationality, and sex, using at least two verification methods. Guidance on appropriate verification methods includes, for lower risk, (i) a Jersey driving license or (ii) a birth certificate in conjunction with a bank statement, utility bill, or other listed evidence. Other verification methods include current passport (which is most commonly used to verify identity), national identity card, and independent data sources.

390. The financial institutions interviewed during the assessment did not identify any particular difficulties in obtaining appropriate identification and verification information. Some indicated that the full procedures were applied even in cases where concessions (discussed below) would permit a more liberal application of the requirements.

Identification of Legal Persons or Other Arrangements (c. 5.4):

5.4(a)

391. In the case of a customer that is not an individual, Articles 13 and 3(2)(c)(i) of the MLO require a relevant person to identify and verify the identity of any person purporting to act on behalf of a customer, and (by amendment to the MLO effective November 7, 2008), to verify the authority of any person purporting to so act.

5.4(b)

392. Articles 13 and 3(4) of the MLO require a relevant person to establish and verify the identity of a customer, including that person's name and legal status.

393. Sections 4.4 and 4.5 of the Handbook for Regulated Businesses set out the information to be collected in the case a customer that is a trustee of a trust and in the case of a legal body, respectively. In the case of the trustee of a trust, this includes the name of the trust and name and address of the trustee. Section 4.4. also states (in Section 4.4.2 Regulatory Requirements) that relevant persons must verify the name and date of establishment of an express trust, the identities of the trustees, and take reasonable measures to verify identity of the individuals concerned with the trust (i.e., settlors, protectors, and beneficiaries), and that all key documents used to verify identity must be in a language understood by the employees of the business. Section 4.5 of the Handbook for Regulated Businesses sets out the information to be collected in case of a customer that is a legal body, including the name of the company, its registered office address, and names of directors. The corresponding Regulatory Requirements for verification of identity of legal bodies (Section 4.5.2) include verification of the identity, including at a minimum, name, official identification number, and date and country of incorporation. Permissible verification methods for a company include a certificate of incorporation, memorandum and articles of association, company registry search (including confirmation that company is not in the process of being dissolved, wound up, or terminated), latest audited financial statement, independent data sources, and a personal visit.

394. Article 3(2)(c)(ii) of the MLO requires (by amendment effective November 7, 2008) the relevant person to understand the provisions under which a customer that is not an individual can enter into legal arrangements.

395. Because the requirements described above to verify the authority of any person authorized to act on behalf of a non-individual customer and to understand the provisions under which a non-individual customer can enter into legal arrangements have only recently been added to the MLO, there is no guidance regarding them in the Handbook for Regulated Businesses.

396. The assessors note in this regard that the MLO does not use the FATF term “legal arrangement” with regard to customers that are not individuals, and that the Handbook for Regulated Businesses refers to “legal bodies” and “trusts” as the only types of non-individual customers. If there were some type of “legal arrangement” other than a trust (that also would not fall within the definition of a “legal body”) that could be utilized in Jersey it would be covered by the MLO, which applies to every customer, whether it is an individual or not an individual, although there may not be specific guidance covering any such “legal arrangement” in the Handbook for Regulated Businesses. Also, the assessors note that an amendment to Article 3(c)(ii) of the MLO effective November 7, 2008 uses the term “legal arrangement” in a different context from the standards, which could cause confusion.

397. The assessors did not identify an instance in which these points caused difficulty in practice. However, as trust-type business forms a sizeable component of the financial-services business conducted in and from Jersey, it would be helpful if these definitional points could be addressed. Financial institutions interviewed confirmed that their practice was to identify and verify the identity, as far as feasible, of all relevant parties to a trust arrangement. Although many such arrangements are transparent to the financial institutions, some can be more complex and there was recognition by some practitioners that such arrangements carried significant risk of abuse.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

398. In the case of a customer that is not an individual, Articles 13 and 3(2)(c)(iii) of the MLO require a relevant person to identify the individuals who are the customer’s beneficial owners or controllers and take reasonable measures to verify the identity of such individuals - obtaining evidence, on the basis of documents, data or information from a reliable and independent source, that is reasonably capable of verifying that the individual to be verified is who the person is said to be and satisfies the person responsible for the identification of a person that the evidence does establish that fact. Article 2(1) of the MLO defines the beneficial owner or controller of a person who is not an individual as an individual who is an ultimate beneficial owner of that person (whether or not the only ultimate beneficial owner), and an individual who ultimately controls, or exercises control over the management of, the person (whether alone or with another person or persons). The definition is similar to that contained in the FATF Glossary, but without the inclusion of the clause “the person on whose behalf a transaction is being conducted” (as this is covered by Article 3(2)(b) of the MLO).

399. Financial institutions interviewed confirmed to the assessors that it has long been their practice to identify the ultimate beneficial owner in all cases, and they displayed confidence in the accuracy of their information. A small number of the institutions acknowledged that, in practice, they can encounter difficulties in the case of customers from certain jurisdictions in obtaining all the necessary confirmations and need to develop alternative means to verify beneficial ownership. The

assessors note that the non face-to-face nature of much of the nonresident business increases the risk that the identity of the ultimate beneficial owner might remain concealed.

5.5.1

400. Articles 13 and 3(2)(b) of the MLO require a relevant person to determine whether a customer is acting for a third party and, if so (i) to identify that third party and take reasonable measures to verify identity; and (ii) where the third party is not an individual, to understand the ownership and control of that third party, and identify each individual who is that third party's beneficial owner or controller and take reasonable measures to verify identity. As is discussed below, Article 17 of the MLO provides that in certain circumstances, a relevant person need not identify (nor verify the identity of) an underlying customer for whom it is acting, or any beneficial owners or controllers. Due to the underlying risk of misuse, the assessors concluded that this arrangement is not compliant, including on a risk-based approach, with Recommendation 5, under which financial institutions should be required to determine whether the customer is acting on behalf of another person and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person, although there are some grounds for accepting the Article 17 concessions in the case of commingled accounts where it would not be feasible to identify all third parties.

5.5.2

401. In the case of a customer that is not an individual, Article 13, Article 3(2)(c)(ii) and (iii), and Article 2 of the MLO require a relevant person to: (a) understand the ownership and control structure of the customer; and (b) identify the individuals who are the customer's ultimate beneficial owners or who ultimately control or otherwise exercise control over the customer, and obtain evidence that is reasonably capable of verifying that the person to be identified is who the person is said to be.

402. Section 4.4 of the Handbook for Regulated Businesses requires a relevant person to collect relevant identification information on the trustee(s) and on the express trusts (and any subsequent changes), and on the individuals who are concerned with the trust. This includes the trustee, settlor, and beneficiaries. Section 4.5 of the Handbook for Regulated Businesses requires the relevant person to collect relevant identification information on a legal entity, its beneficial owners and controllers (and any subsequent changes), and sets out in guidance notes the individuals who are to be identified and verified in the case of a customer that is a legal body. This includes those holding a 25 percent of more interest in the capital of the legal body (in lower risk situations) and the legal body's directors. In cases where the risk is considered to be standard or higher, the guidance indicates that identification information is to be obtained on individuals with ultimate effective control over the legal body's assets, including individuals comprising the mind and management of the legal body. By virtue of Article 2 of the MLO, a person that holds a stock or share in a body corporate the securities of which are listed on a regulated market is not considered to be a beneficial owner.

403. The financial institutions interviewed indicated that they had well-developed procedures for determining the beneficial owners of legal entities and all relevant parties to a trust. As much of the business in Jersey is introduced by other financial services businesses or professional advisors, it was seen as a straight-forward process in most cases to understand the control structure of a client. Complex structures were also encountered; while some institutions informed the assessors that they

do not accept such structures, others confirmed that they would consider such clients, but subject to a higher degree of due diligence.

Information on Purpose and Nature of Business Relationship (c. 5.6):

404. Articles 13 and 3(2)(d) of the MLO require a relevant person to obtain information on the purpose and intended nature of a business relationship or one-off transaction, including in cases where the concessions under Articles 16 and 17 are being availed of, as the concessions do not extend to the combination of Articles 13 and 3(2)(d). However, the assessors considered that, with the limited information available to relevant persons particularly where the Article 17 concession is being claimed, it could be difficult in some cases for relevant persons to fulfill their obligations in a meaningful manner with regard to obtaining information on the purpose and nature of the underlying business relationship or one-off transaction.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

405. Article 13(1)(b) of the MLO requires a relevant person to conduct ongoing monitoring during a business relationship.

406. Articles 13 and 3(3)(a) of the MLO require a relevant person to scrutinize transactions undertaken through the course of a business relationship to ensure that they are conducted in a way that is consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile, such scrutiny to include, where necessary, the source of funds.

407. Articles 13 and 3(3)(b) of the MLO require a relevant person to keep documents, data, and information obtained under identification measures up to date and relevant by undertaking reviews of existing records. Article 15 of the MLO requires a relevant person to apply enhanced CDD measures in any situation which, by its nature, can present a higher risk of ML.

408. Financial institutions interviewed explained that they operate risk-based systems to seek to identify transactions that point to a material departure from expectations, as recorded in a client's profile. However, the assessors considered that, with the limited information available to relevant persons where the Article 17 concession is being claimed, it could be difficult in some cases for relevant persons to fulfill their obligations in a meaningful manner with regard to conducting ongoing due diligence.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

409. Article 15 of the MLO requires a relevant person to apply enhanced CDD measures in certain specifically enumerated situations, as well as in any situation which, by its nature, can present a higher risk of ML. The specifically enumerated situations include (a) customers that have not been physically present for identification purposes; (b) where a bank in Jersey establishes a banking relationship with a bank outside Jersey; and (c) where the relevant person proposes to have a business relationship with, or conduct a one-off transaction (i) with a person connected with a country or territory that does not apply, or insufficiently applies, the FATF Recommendations, or (ii) with a politically exposed person.

410. Section 3.3.4 of the Handbook for Regulated Businesses sets out factors to consider when assessing the risk of a customer relationship. These include value of assets handled and type and

complexity of relationship. For example, unexplained use of corporate structures and express trusts, and use of nominee and bearer shares may indicate higher risk.

411. Article 15(2) of the MLO defines “enhanced customer due diligence measures” to mean measures that involve specific and adequate measures to compensate for the higher risk of money laundering. Specific measures for higher risk customers are included in Sections 3.4.1 and 3.4.2. of the Handbook for Regulated Businesses.

412. Jersey law does not require enhanced due diligence for all of the examples of higher-risk business set out in the FATF Recommendations. In particular, the MLO does not require the application of enhanced due diligence to all accounts for non-residents, but only those where the customer has not been present for account opening. Neither is enhanced due diligence specified as being required for private banking customers. The assessors question whether this approach is appropriate and fully consistent with Recommendation 5, but note that Jersey has identified a range of other risk factors that relevant persons are to take into consideration which have the potential to require enhanced due diligence measures to be applied.

413. As noted, Jersey has adopted a risk-based approach, which the financial institutions appear to have internalized in their CDD procedures. Based on discussions with a range of financial institutions, it was clear to the assessors that there were differences in approach across the institutions. Much of the business conducted in Jersey is on a non face-to-face basis for nonresidents; as this is normal business for Jersey’s financial institutions, some took the view that these attributes did not in themselves constitute a higher risk; by contrast, a few institutions recognized that the risk was higher and had adapted their procedures accordingly. Overall, however, the financial institutions demonstrated in discussions with the assessors a strong awareness of ML and FT risks.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

414. Articles 16, 17, and 18 of the MLO provide for exemptions from CDD requirements or for reduced or simplified CDD measures to be applied in a range of situations. Articles 16 and 17 permit reliance on intermediaries and introducers to obtain and retain CDD information on underlying customers (third parties) or introduced customers under certain circumstances, and Article 18 provides for exceptions from the standard CDD measures with regard to the relevant person's direct customer in certain situations.

415. Article 16 of the MLO permits financial institutions and other relevant persons to establish a business relationship with an intermediary on behalf of a third party, or with a customer introduced by an introducer and, in either case, to rely on the identification measures performed (including documentation collected and retained) on that third party by the intermediary, or on that introduced customer by the introducer, subject to specified conditions. The Jersey authorities take the position that the concession authorized by Article 16 with respect to intermediaries should be addressed under Recommendation 5 rather than Recommendation 9. They take this position because the Interpretive Note to Recommendation 9 states that it “does not apply to relationships, accounts or transactions between financial institutions for their clients” and that such relationships are to be addressed by Recommendations 5 and 7. The assessors have carefully considered this position and are of the view that, although the precise scope of the Interpretive Note is unclear, Recommendation 9, which is entitled in the assessment methodology “Intermediaries/Introduced business,” is by its terms intended to set forth the conditions under which countries are to permit financial institutions “to rely on

intermediaries or other persons to perform...CDD or to introduce business, provided the criteria...are met.” The assessors can find no reason that introducers should be evaluated against the specific standards of Recommendation 9, while intermediaries should be assessed against different criteria. Accordingly, the conditions pursuant to which relevant persons are authorized to rely on intermediaries and introducers under MLO Article 16 are considered in relation to Recommendation 9.

416. Article 17 of the MLO provides that, in more limited conditions than are available under Article 16, a relevant person may establish an account in the name of an intermediary but need not identify (or verify the identity of) the underlying customer for whom an intermediary is acting (or any beneficial owners or controllers). The conditions for utilizing this concession are as follows:

1. Under Article 17(1), the relevant person must know or have reasonable grounds to believe that the intermediary is a bank, collective investment fund functionary, investment business, fund service business, or insurance business that is registered (or licensed) in Jersey, or carries on an equivalent business.⁸
2. Under 17(2), the relevant person is required to assess the risk of operating an intermediary account on a non-disclosed basis (i.e., without identifying the underlying client) as set out in Section 4.10.1 of the Handbook for Regulated Businesses (Regulatory Requirements). Factors to consider are listed in Section 4.10.1 (guidance).⁹
3. The concession is not available if the relevant person suspects money laundering or terrorist financing. (Article 17(3)).

417. The Handbook for Regulated Businesses (Section 4.10) explains that intermediary relationships may be established on behalf of a single customer (designated relationships) or multiple customers (pooled relationships), and notes, as an example of pooled relationships, foreign banks (typically Swiss) placing pooled deposits on a fiduciary basis with Jersey banks. Given this example, it would seem that the relevant person in Jersey would not be required to, and might not be in a position to, obtain any information on the beneficial owner of funds they hold on behalf of customers of their Swiss bank customers. While the concession may be pragmatic, it places significant reputational reliance on the quality of the AML/CFT processes of the foreign intermediary bank and could leave the Jersey bank in a difficult position should weaknesses subsequently emerge regarding the quality of the CDD conducted abroad, particularly as—unlike the concession permitted under Article 16—there does not appear to be any requirement that the Jersey bank identify the underlying customer (beneficial owner), spot-check the intermediary’s CDD measures, or be in a position to obtain copies of the CDD documentation should it be duly required. As the Handbook for Regulated Businesses mentions Swiss banks as an example, the impact of bank secrecy laws there would further ensure that the Jersey bank would not be in a position to obtain any information on the beneficial owner of the funds they hold on behalf of customers of their Swiss-bank customers. Due to the underlying risk of misuse, the assessors concluded that this arrangement is not fully compliant with the FATF recommendations. The assessors understand from their interviews with financial

⁸ See footnote above for the MLO definition of “equivalent business.”

⁹ See Section 3.3.1 (below) for a list of some of the factors.

institutions that the institutions' use of this concession is fairly limited, which to some extent mitigates its potential for risk.

418. The concession under Article 17 of the MLO, which is available for a prescribed range of intermediaries and limited to a prescribed range of financial activities, is difficult to classify by reference to the FATF Recommendations. It provides a complete exemption from identification and verification requirements in relation to the underlying customer(s) of the intermediary and beneficial owner(s), at least in part on the basis that the contractual relationship is between the relevant person and the intermediary, i.e., the underlying customer never becomes a (direct) customer of the relevant person. However, as Recommendation 5 does not provide for exemption in such circumstances, albeit allowing for reduced or simplified measures in lower-risk cases, there remains a requirement under Recommendation 5 to determine whether the customer (in this case, the intermediary) is acting on behalf of another person (and by definition, the intermediary is so acting) and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person. The assessors note that no such requirement applies in Jersey in circumstances where the Article 17 exemption is availed of.

419. In determining whether the business of intermediaries could be considered lower risk, as considered by the authorities, for purposes of Recommendation 5, the assessors note that the scope of the exemption from identification and verification includes both commingled (pooled) accounts and individual customer business (designated accounts). While the FATF recommendations do not clarify whether a difference in treatment is justifiable for these two types of business, the assessors conclude by reference to the Basle CDD paper that a treatment such as is permitted by Article 17 could be accepted in the case of commingled balances as it would be impracticable to identify/verify each individual beneficial owner of funds in the pool. (A valid example might be a holding in a Jersey mutual fund by another fund-of-funds). In such cases, reduced or simplified measures under Recommendation 5 could be appropriate.

420. In the case of designated accounts or any business that was capable of being disaggregated by underlying customer, however, the assessors conclude that the full obligations of Recommendation 5 must be applied with respect to the identification and verification of underlying customers and beneficial owners. On that basis, Article 17 of the MLO conflicts with Recommendation 5. In the event that the authorities decide to amend the current provisions and require identification/verification but choose to permit reliance on the intermediary to conduct these tasks, this would be acceptable, but only subject to full compliance with the requirements and criteria of Recommendation 9.

421. Article 18 of the MLO offers several exceptions from identification requirements for particular types of customers or products that do not involve reliance on intermediaries or introducers. Paragraphs (2) through (6A) of Article 18 except from the customer identification measures of Article 13 the following types of customers and products considered to be of low money laundering risk:

1. Customers that are public authorities (defined as a person holding a public office in Jersey). Section 4.9.3 of the Handbook for Regulated Businesses states (in Regulatory Requirements) that the relevant person must obtain and retain documentation establishing the applicant is entitled to use this concession.
2. Pension, superannuation, or similar schemes and where contributions to the scheme are made by the employer or by deductions from wages and interests under the scheme may not be assigned.

3. Insurance policies connected to a person's employment with no surrender value and that may not be used as collateral for a loan.

4. Insurance policies having a single premium of GBP1,750 or less, or an annual premium of GBP750 or less.

5. Customers whose securities are listed on a regulated market.¹⁰ Section 4.9.2 of the Handbook for Regulated Businesses states (in Regulatory Requirements) that a relevant person must obtain and retain documentation establishing that the customer has been admitted to trading on a regulated market, and that where a subsidiary of the customer is not wholly owned, identification and verification measures must be carried out in respect of beneficial owners and controllers not connected with the traded parent.

422. These Article 18 exceptions from the CDD requirements are generally consistent with the examples in the FATF Recommendations (and Methodology).

423. Article 18(7) of the MLO provides an exception from the requirement to perform some identification and verification measures in respect of an applicant (and its beneficial owners and controllers) that is a "regulated person" under the MLO or a person who carries on an equivalent business to any regulated person. This includes a bank, collective investment fund functionary, investment business, fund service business, or insurance business that is registered (or licensed) in Jersey, or a person who carries on an equivalent business to any of the foregoing. This provision does not provide an exemption in respect of CDD requirements for any third parties for whom the applicant is acting, or their beneficial owners or controllers (which are covered under Articles 16 or 17). Section 4.9.1 of the Handbook for Regulated Businesses states (in Regulatory Requirements) that a relevant person must retain documentation establishing that an applicant is entitled to benefit from this exemption. The assessors accept that this concession is consistent with the examples of reduced or simplified CDD contained in the FATF recommendations.

424. Article 18(8) of the MLO exempts from the requirement to identify and verify the identity of any person purporting to act on behalf of a customer, a person authorized to act on behalf of a customer who is not a relevant person, and who acts in the course of employment with a financial services business that is a regulated business or an equivalent business to a regulated business. The assessors understand that this exemption is directed at an employee of a trust company business who is authorized to act on behalf of a customer of that business that is not itself a relevant person, and who is acting in the course of his employment. The assessors note that, as a result of a recent amendment to Article 3 of the MLO, this provision would also exempt the relevant person from verifying the authority of the person to so act. The JFSC confirmed that the exemption should be narrowed so that the relevant person would not be exempted from verifying the authority of the employee of the financial services business to act on behalf of the customer.

425. Article 18(8A) of the MLO exempts attorneys and real estate agents from the requirement to verify the identity of a customer when entering into a relationship to enable the customer to purchase

¹⁰ "Regulated market" has the same meaning as in the Money Laundering Regulations 2007 of the United Kingdom. MLO Article 2(5).

or sell real estate in Jersey. The justification for this is the very stringent requirements that are otherwise imposed on real estate transactions in Jersey by other government agencies.

426. In addition, Section 3.5 of the Handbook for Regulated Businesses contains (in Regulatory Requirements) a concession from CDD requirements when a relevant person acquires a business or block of customers. In such a case a relevant person must undertake sufficient due diligence on the seller to establish the level of CDD information and evidence held regarding the business to be acquired, and may rely on such information and evidence when the seller is a regulated person (as defined in the MLO) or carries on an equivalent business to any category of regulated business (as defined in the MLO), and the relevant person has assessed the seller's CDD procedures as satisfactory. Such assessment must involve either sample testing or an assessment of all relevant CDD for the customers to be acquired.

427. Finally, Section 4.11 of the Handbook for Regulated Businesses contains an exemption from the verification requirements of Articles 13 and 3. This provides that, where a relevant person receives funds from a bank (that is a regulated person or carries on "equivalent business") that have come from an account in the sole or joint name of the applicant, then the receipt of funds from such account shall be considered satisfactory verification, where the product or service is considered very low risk. This section provides (in Regulatory Requirements) that this concession will only apply where the relevant person can demonstrate that an applicant does not present higher risk and it is reasonable to apply it, and that the product satisfies a number of conditions. These essentially mandate that all payments into the account must be received directly from the customer's account at the other bank and not from any third parties and any payments from the account can only be made to the customer's account at the other bank, except for withdrawals made in person by the customer where identity must be evidenced in the normal way. While the assessors agree that the ML and TF risks appear to be minimized where the above conditions are satisfied, it is not entirely clear that this acceptance of source of funds as principal means of verification of identity is entirely compatible with Recommendation 5. The assessors recommend that, if this concession is to be retained, the conditions should be tightened to exclude entirely the risk of abuse for money laundering by requiring that the funds received may be withdrawn only by being returned to their original source in the form and manner originally received.

428. The assessors found that, in general, the above concessions granted under MLO Article 18(8) and (8A) and in Section 3.5 of the Handbook for Regulated Businesses, while not similar to the examples contained in the FATF recommendations, appear to be based upon a reasonable process for the determination of low risk. The assessors also noted that, whereas Article 18(9) of the MLO provides that the concessions that are set out in Article 18 may not be used where a relevant person has knowledge or suspicion of money laundering or terrorist financing or in any situation which by its nature presents a higher risk of money laundering or terrorist financing, the concessions contained in the Handbook are not explicitly subject to both of those conditions (although they are excluded in higher risks situations in general).

429. The assessors also noted as a general matter that Article 18 of the MLO could be read to grant a complete exception from the identification requirements of Recommendation 5, rather than only a reduction in the level of requirements, as the Recommendations seem to permit. In this regard, the Jersey authorities take the position that ongoing monitoring of customers subject to these concessions is still required.

430. In terms of practical implementation, it was evident to the assessors that the concessions detailed above are of significant importance to a number of Jersey's financial institutions and they have had extensive discussions with the JFSC regarding their application. The key objective of the concessions, as explained to the assessors, was to minimize duplication of CDD work and reduce the volume of documentation being transmitted between financial-sector participants, whether within Jersey or from abroad. The assessors were not in a position to assess in detail the degree of reliance placed by Jersey financial institutions on third parties in availing of these concessions but formed the view that there was considerable variation in the degree to which the institutions chose to rely on others as against conducting all of their own CDD checks. This raises a question regarding the effectiveness of implementation across the system. It was evident that, through its supervisory work, the JFSC also recognized the risks involved; a range of deficiencies was identified by the JFSC by means of the onsite inspection work which resulted in a requirement in each case for remedial action. An active program of remediation of CDD files was in the course of completion in a number of Jersey's financial institutions at the time of the on-site visit. The JFSC noted a significant improvement in overall compliance from early 2008 onwards.

Risk—Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):

431. The concessions available under Articles 16 and 17 of the MLO permit reliance for certain purposes on intermediaries and introducers located either in or outside Jersey. If they are located in another country, they may be relied upon if they carry on "equivalent business." Article 5 of the MLO sets out the criteria that must apply for a person to be treated as carrying on equivalent business. In particular, Article 5(d) requires that the person being relied upon must be subject to requirements to forestall and prevent ML that are consistent with those in the FATF Recommendations. Section 1.7.3 of the Handbook for Regulated Businesses sets out the basis for determining whether a jurisdiction's requirements are consistent and Appendix B lists those jurisdictions which the JFSC has considered and has assessed as being equivalent. A relevant person may assess whether an overseas jurisdiction that is not listed by the JFSC is "equivalent". It must follow the approach that is set out in Section 1.7 of the Handbook for Regulated Businesses and must be able to demonstrate the process that it has undertaken and the basis for its conclusion. Article 18 of the MLO also provides for reduced or simplified CDD measures to be applied to customers that in some cases may be resident in another jurisdiction, without a requirement that the relevant person make a determination that each such jurisdiction is in compliance with and has effectively implemented the FATF recommendations. In particular, the concessions in Article 18(3) through 18(6A) may be applied to customers in other jurisdictions, on the rationale that they are being applied to a low-risk product rather than customer. The concession in Article 18(7) may be applied to customers in other jurisdictions, but requires a determination that such customer carries on an "equivalent business."

Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):

432. Articles 16(8), 17(3), and 18(9) of the MLO each provides that the reduced or simplified measures authorized in each respective Article cannot be applied where there is suspicion of money laundering. Article 18 also provides that the concessions provided therein are not applicable "in any situation which by its nature can present a higher risk of money laundering. Articles 16 and 17 do not have a similar provision, and therefore are not fully compliant with the Interpretive Note to Recommendation 5.

Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):

433. Sections 3 and 4 of the Handbook for Regulated Businesses provide guidance on the application of a risk-based approach to CDD. Section 3 deals with the process to be followed in conducting a risk-based approach and Section 4 deals specifically with the application of a risk-based approach to the identification and verification of identity of customers that are individuals, trustees of express trusts, and legal bodies. Section 1.2 of the Handbook for Regulated Businesses explains the status of guidance. Paragraph 13 explains that guidance is provided to indicate ways in which statutory and regulatory requirements may be satisfied, but allows for alternative means to meet requirements. Paragraph 15 explains that, in complying with statutory and regulatory requirements, and in applying guidance, a relevant person should (where permitted) adopt an appropriate and intelligent risk-based approach and should always consider what additional measures might be necessary to prevent exploitation.

Timing of Verification of Identity—General Rule (c. 5.13):

434. Article 13(1) of the MLO provides that a relevant person must apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction, subject to Article 13(4) and (5). These exceptions to the requirement are discussed in the following section.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):

435. Article 13(4) provides that verification of the identity of a customer may be completed as soon as reasonably practicable after the establishment of a business relationship if: (a) it is necessary not to interrupt the normal conduct of business; and (b) there is little risk of ML as a result of completing verification after establishment of the relationship.

436. Section 4.12 of the Handbook for Regulated Businesses also addresses the timing of identification and verification of identity. Section 4.12.1 states in “Regulatory Requirements” that verification may be completed after the initial establishment of the relationship if, in addition to satisfaction of the two requirements set forth above, all other necessary CDD information (including information on identity) has been obtained, verification is carried out as soon as reasonably practicable, the relevant person “highlights” to the customer its obligation to terminate the relationship at any time on the basis of non-completion of verification measures, and the money laundering risk is effectively managed. In addition, this section of the Handbook for Regulated Businesses provides that a relevant person must not pay funds away to a third party, other than to invest or deposit funds on behalf of a customer, until such time as identity has been verified.

437. Section 4.12.1 of the Handbook for Regulated Businesses states (in Guidance Notes) that the ML risks can be effectively managed where: (i) policies and procedures establish timeframes for the completion of verification procedures; (ii) the establishment of any relationship where identity has still to be verified has received appropriate authorization and the relationship is appropriately monitored—so that verification of identity is carried out as soon as is reasonably practicable; and (iii) appropriate limits or prohibitions are placed on the number, type and amount of transactions over an account.

438. Article 13(5) of the MLO provides that where a relevant person carries out two or more one-off transactions that are linked and where at a later stage it comes to the attention of any person

handling those transactions that they are linked and exceed the applicable threshold, then verification must be completed as soon as reasonably practicable.

439. From discussions with financial institutions, it appeared to the assessors that some of them were making routine use of the scope to commence business relations prior to finalizing identification measures, on the basis that it was “necessary not to interrupt the normal course of business”. There was in some cases a very liberal interpretation of the word “necessary”. Given that much of the business in Jersey is non face-to-face for nonresidents, additional risk may arise from a liberal approach to the timing of CDD completion. In general, the financial institutions explained that they would commence the relationship only after the identification work was substantially complete, with only minor points still outstanding; some would accept funds but not allow further transactions until all identification measures were complete. However, the assessors were left with the impression, having regard to the inherent risks in their business, that some institutions were unduly relaxed with regard to the length of time allowed before all identification measures had been completed.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

440. Under Article 14(1) of the MLO, if a relevant person is unable to apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction, it must not establish that business relationship or carry out that one-off transaction. Under Article 14(4) of the MLO, where it appears that two or more one-off transactions are linked and that the total amount of those transactions is EUR15,000 (or lower threshold, where applicable) or more, a relevant person must not carry out any further linked transactions in respect of that one-off transaction if it is unable to apply identification measures as soon as reasonably practicable. Under Article 14(5) of the MLO, where a relevant person suspects ML or FT and it is unable to apply identification measures in respect of any business relationship or one-off transaction, the relevant person shall not establish that business relationship, or shall not carry out that transaction, as the cases require. The requirement not to establish a relationship or not to carry out a one-off transaction under Article 14 of the MLO does not apply where a relevant person has consent to do so from an officer of the JFCU. The JFCU may consider providing such consent if it is concerned that a customer may be alerted to the relevant person’s suspicion or its work may be assisted by allowing a relationship or transaction to proceed.

441. Under Article 14(8) of the MLO where a relevant person does not establish a relationship or does not carry out a one-off transaction as a result of the application of Article 14, it must consider whether to make a report in line with Part 5 of the MLO.

442. In general, financial institutions confirmed that they complied with this requirement, although there appeared to the assessors to be undue tolerance of delay in completing identification measures in some cases. A number of institutions informed the assessors that they had filed SARs in cases where they had difficulty in obtaining necessary information.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

443. Under Article 14(2) of the MLO, if a relevant person is unable to verify identity—where it is permitted to verify identity after the establishment of a relationship—it must terminate that relationship. Under Article 14(3) of the MLO, if a relevant person is unable to apply ongoing monitoring during a business relationship, then it must terminate that relationship. Under

Article 14(4) of the MLO, where it appears that two or more one-off transactions are linked and that the total amount of those transactions is EUR15,000 or more (other than in the case of an MSB or casino), EUR1,000 (in the case of an MSB), or EUR3,000 (in the case of a casino) a relevant person must not complete a one-off transaction if it is unable to apply identification measures as soon as reasonably practicable. Under Article 14(5) of the MLO, where a relevant person suspects ML or FT, or has doubts about the veracity or adequacy of documents, data, or information previously obtained under CDD measures and it is unable to apply identification measures in respect of any business relationship or one-off transaction, the relevant person shall terminate that business relationship, or shall not complete that transaction, as the case requires. Under Article 14(7) of the MLO, if a relevant person is unable to apply identification measures in respect of an existing business relationship, it must terminate that relationship. The requirement to terminate a relationship or not to complete a one-off transaction under Article 14 of the MLO does not apply where a relevant person has consent to continue a relationship or complete a transaction from an officer of the JFCU. The JFCU may consider providing such consent if it is concerned that a customer may be alerted to the relevant person's suspicion or its work may be assisted by allowing a relationship or transaction to proceed. Under Article 14(8) of the MLO where a relevant person terminates a relationship, or does not complete a one-off transaction as a result of the application of Article 14, it must consider whether to make a report in line with Part 5 of the MLO.

Existing Customers—CDD Requirements (c. 5.17):

444. Article 13(2) of the MLO provides that, where a relevant person has a business relationship with a customer that started before the MLO came into force in February 2008 (an existing customer), it must apply identification measures to that relationship at appropriate times after April 1, 2008. Article 13(3)(a) states that “appropriate times” for the application of identification measures means: “times that are appropriate having regard to the degree of risk of ML taking into account the type of customer, business relationship, product or transaction concerned;” and any time when ML is suspected. In addition, Article 13(2B) of the MLO applies the requirement for ongoing monitoring to all existing customers. This involves the scrutiny of transactions as required under Article 3(3)(a) for all customers, and ensuring that documents, data, and information that is held on an existing customer and which has been collected under the MLO or Money Laundering (Jersey) Order 1999 (in force between July 1, 1999 and February 4, 2008) and held prior to the MLO coming into force is kept up to date and relevant by undertaking reviews of existing records, including without limitation reviews when any inconsistency has been discovered as a result of applying the required scrutiny.

445. Section 9 of the Handbook for Regulated Businesses addresses existing customers. It requires (in Regulatory Requirements) a relevant person to risk assess each existing customer, and to apply identification measures to higher risk customers as soon as is practicable. In the case of other customers, an appropriate time to apply identification measures will include: where a transaction of significance takes place; and when a relevant person's customer documentation standards change substantially. In the case of an existing customer that presents a lower or standard risk, Section 9 of the Handbook for Regulated Businesses anticipates that it may not be necessary to verify identity until such time as the relationship is assessed as presenting a higher risk.

446. The assessors question whether MLO Article 13(2), which requires the application of CDD measures to existing accounts at “appropriate times” as defined in Article 13(3), is consistent with Recommendation 5, which requires the application of CDD measures to existing customers “on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate

times.” In particular, given the increased robustness in the CDD requirements in the MLO and the new entities subject to the requirements since the MLO has come into effect, it would seem that it may be more appropriate to establish specific periods for updating customer identification, graduated on a risk basis.

447. As outlined above, Jersey’s financial institutions and other relevant persons have been engaged in a series of remediation exercises to bring their CDD records up to the standard of the latest version of the MLO. This work was mandated by the JFSC and has absorbed substantial resources. A risk-based approach was employed, with initial attention given to high-risk customers. A number of financial institutions confirmed to the assessors that their work in this regard was largely complete at the time of the on-site visit, while others still appeared to be in the midst of their remediation program.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18):

448. As noted above, the JFSC informed the assessors that it was not aware of the existence of anonymous accounts, and they have been explicitly prohibited by Article 23B of the MLO, effective November 7, 2008 (and were contrary to requirements in effect prior thereto).

Summary – R.5

449. Against the background of the inherently medium/high-risk nature of Jersey’s financial-sector business, it was clear to the assessors that the JFSC has prioritized the implementation of effective AML/CFT measures and this was reflected in the high levels of awareness of the topic across the financial institutions. It was also evident that the financial institutions were closely involved in the development of the latest requirements which, while largely reflecting the FATF Recommendations, allow for a range of concessions, some of which are difficult to reconcile with the international standard.

Foreign PEPs—Requirement to Identify (c. 6.1):

450. Article 11 of the MLO requires a relevant person to maintain appropriate policies and procedures for the application of CDD procedures. These must have regard to the degree of risk of ML or FT and, under Article 11(3)(c), must include policies and procedures for determining whether a customer, a beneficial owner or controller of a customer, a third party for whom a customer is acting (or any beneficial owner or controller of that third party), or person acting, or purporting to act on behalf of a customer is a politically exposed person (PEP).

451. Article 15(6) of the MLO contains a detailed definition of a PEP that covers all aspects of the definition in the FATF Glossary. It includes individuals entrusted with public functions (with a list of many examples), a list of categories of family members, and categories of close associates.

452. Section 3.4.1 of the Handbook for Regulated Businesses states (in Regulatory Requirements) that risk-based systems and controls must be in place to determine whether a customer (or potential customer), owner or controller of a customer (or potential customer), or third party on whose behalf a customer (or potential customer) acts is a PEP. Sections 3.3.1 through 3.3.5 of the Handbook for Regulated Businesses set out the CDD to be applied to any customer. This includes requesting information, considering that information, and the use of external data sources. Section 3.4.1 of the Handbook for Regulated Businesses sets out (in Guidance Notes) how a relevant person may

demonstrate that it has appropriate systems and controls for determining whether it is servicing a PEP. This includes assessing those jurisdictions with which customers are connected that pose the highest risk of corruption and establishing who are current or former holders of prominent public functions in those countries.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1):

453. Article 15(5A) of the MLO (effective November 7, 2008) requires a relevant person to apply enhanced CDD measures that include specific and adequate measures where a relevant person proposes to have a business relationship or carry out a one-off transaction with a customer who is, is beneficially owned by, or is acting on behalf of, a PEP. Such measures must include senior management approval of the business relationship.

454. Under Section 3.4.1 of the Handbook for Regulated Businesses (in Regulatory Requirements), a relevant person must have clear policies and procedures for dealing with PEPs, including board or appropriate senior management approval to establish a relationship with a PEP, and to continue a relationship should a subsequent connection with a PEP be identified.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

455. Article 15(5A) of the MLO (effective November 7, 2008) requires (among other things), when a relevant person has or proposes to have a business relationship or carry out a one-off transaction with a customer who is, is beneficially owned by, or is acting on behalf of, a PEP, that the required specific and adequate measures include measures to establish the source of wealth of the PEP and source of funds involved in the business relationship or one-off transaction. In addition, Articles 13 and 3 of the MLO require a relevant person to assess the risk that any business relationship or one-off transaction will involve ML or FT, which includes obtaining appropriate information for assessing that risk. Section 3.3 of the Handbook for Regulated Businesses (in Regulatory Requirements) requires a relevant person to collect relevant CDD information. In the case of a higher risk customer, a relevant person may demonstrate that it has done so where it takes reasonable measures to establish the source of funds for a relationship or one-off transaction and source of wealth more generally.

Foreign PEPs—Ongoing Monitoring (c. 6.4):

456. Under Article 15(1) (a) of the MLO, a financial institution must apply, on a risk-sensitive basis, enhanced CDD measures to PEP relationships, which includes enhanced ongoing monitoring. Under Section 3.4.1 of the Handbook for Regulated Businesses (in Regulatory Requirements), a relevant person must have clear policies and procedures for dealing with PEPs, including enhanced scrutiny and regular oversight of the relationship at board or appropriate senior management level. Under Section 5.2 of the Handbook for Regulated Businesses (in Regulatory Requirements), a relevant person's monitoring procedures must require more intensive scrutiny of PEPs.

Domestic PEPs—Requirements (Additional Element c. 6.5):

457. An individual that holds a prominent public function domestically is not included in the definition of a PEP. Normal CDD measures are applicable, and, where risk for a particular customer is assessed as being higher, enhanced CDD measures must be applied under Article 15(1)(b) of the MLO.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

458. Following enactment of the Corruption (Jersey) Law 2006, Jersey has requested the U.K. authorities to extend its ratification of the UN Convention against Corruption to include Jersey. Jersey authorities indicated that no date can be estimated for this as it is outside their control.

Effectiveness of implementation – R.6

459. In discussions with assessors regarding high-risk clients, PEPs were among the top categories identified by financial institutions. The assessors were informed that there is a large number of PEP-related accounts in Jersey though, on further analysis, it appears that many relate to relatively low-level officials and, in a number of cases, financial institutions opt to apply PEP requirements also to all domestic Jersey politicians and senior officials, although not required to do so. Among the customers classified as PEPs, the assessors understood that there are also significant foreign PEPs with substantial funds in or managed from Jersey. The financial institutions interviewed seemed to be well aware of the potential risks arising from PEPs and familiar with the CDD requirements. However, through its inspection work, the JFSC has identified that some banks have procedural weaknesses in this area that need to be rectified, as their implementation standards are not as effective as necessary.

Cross-Border Correspondent Accounts and Similar Relationships

460. Article 15(4B) of the MLO (effective November 7, 2008) requires a relevant person to apply specific and adequate measures where a relevant person that is a bank has or proposes to have a banking or similar relationship with an institution (a “respondent”) whose address for that purpose is outside Jersey. These measures include Paragraph 4 of the correspondent banking section of the Handbook for Regulated Businesses, which sets out (in Regulatory Requirements) what these enhanced measures must be.

Requirement to Obtain Information on Respondent Institution (c. 7.1) :

461. Article 15(4B) of the MLO (effective November 7, 2008) requires a relevant person to apply specific and adequate measures where a relevant person that is a bank has or proposes to have a banking or similar relationship with a respondent whose address for that purpose is outside Jersey. These measures include gathering specific information about the institution to understand fully the nature of its business, and determining the reputation of the institution and the quality of supervision, including whether it has been subject to money laundering investigation or regulatory action. Paragraph 4 of the correspondent banking section of the Handbook for Regulated Businesses sets forth (in Regulatory Requirements) generally the same requirements. The Guidance states that the reputation of an institution may be determined by assessing the correspondent’s stature and regulatory track record.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

462. Article 15(4B) of the MLO (effective November 7, 2008) requires that the specific and adequate measures required of a relevant person that is a bank that has or proposes to have a banking relationship with a foreign bank include assessing the institution’s systems and controls to combat money laundering in order to determine whether they are consistent with the requirements of the FATF recommendations, and their effectiveness. In addition, Paragraph 4 of the correspondent

banking section of the Handbook for Regulated Businesses (in Regulatory Requirements) sets forth the same requirement.

Approval of Establishing Correspondent Relationships (c. 7.3):

463. Article 15(4B) of the MLO (effective November 7, 2008) requires that the specific and adequate measures required of a relevant person that is a bank that has or proposes to have a banking relationship with a foreign bank include requiring any new relationship to be approved by the senior management of the relevant person. In addition, Paragraph 4 of the correspondent banking section of the Handbook for Regulated Businesses requires the board of a relevant person that is a bank to approve new correspondent relationships.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

464. Article 15(4B) of the MLO (effective November 7, 2008) requires that the specific and adequate measures required of a relevant person that is a bank that has or proposes to have a banking relationship with a foreign bank include recording the respective responsibilities of the relevant person and the institution to prevent and detect money laundering so that both parties clearly understand those responsibilities. In addition, Paragraph 4 of the correspondent banking section of the Handbook for Regulated Businesses contains (in Regulatory Requirements) the same requirement.

465. In discussions with the banks, the assessors did not identify any material instance in which a bank in Jersey was providing correspondent banking services to banks abroad.

Payable-Through Accounts (c. 7.5):

Article 15(4B) of the MLO (effective November 7, 2008) requires that the specific and adequate measures required of a relevant person that is a bank that has or proposes to have a banking relationship with a foreign bank include being satisfied that, in respect of customers of the institution who have services provided directly by the relevant person, that the institution has applied CDD measures at least equivalent to those set out in the MLO and is able to provide a copy, at the request of the relevant person, of the evidence, documents, data, and information obtained when applying such measures. In addition, Paragraph 4 of the correspondent banking section of the Handbook for Regulated Businesses contains (in Regulatory Requirements) the same requirement. The assessors did not identify any case where a Jersey bank had provided payable-through facilities.

Misuse of New Technology for ML/FT (c. 8.1):

466. Article 11(3)(b) of the MLO requires a relevant person to maintain appropriate policies and procedures which specify the taking of additional measures, where appropriate, to prevent the use for ML or FT of products and transactions which are susceptible to anonymity. In addition, Section 2.4 of the Handbook for Regulated Businesses (in Regulatory Requirements) requires that a relevant person "have systems and controls in place, or take appropriate measures, to guard against the use of technological developments in money laundering or financing terrorism schemes."

467. However, neither the MLO nor the Handbook for Regulated Businesses refer specifically to any particular technological risks such as internet banking (establishing new account relationships by internet or providing services on a non face-to-face basis electronically to existing customers); the use of credit/debit cards as part of account relationships, particularly to nonresidents on a non face-to-face

basis; security of computer systems, particularly if customer-accessible, to address the risk of fraud, phishing, or other improper access to customer information. It would be helpful, perhaps in conjunction with the financial institutions, to develop more detailed guidance for the Handbook for Regulated Businesses to improve the effectiveness of the current basic requirements.

Risk of Non Face to Face Business Relationships (c. 8.2 & 8.2.1):

468. Article 15(3) of the MLO requires a relevant person to apply on a risk sensitive basis enhanced CDD measures where a customer has not been physically present for identification purposes. Article 11(1) of the MLO requires a relevant person to maintain appropriate policies and procedures for the application of such measures, including both customer identification and ongoing monitoring. Article 11(3) (b) requires taking additional measures when appropriate to prevent the use for money laundering of products and transactions that are susceptible to anonymity.

469. Under Section 4.8 of the Handbook for Regulated Businesses (in Regulatory Requirements), a relevant person must perform an additional check to reduce the risk of identity fraud. A relevant person may demonstrate that the specific additional check undertaken is appropriate where it takes into account the risk assessment for the customer, matching the level of assurance that is given by the additional check to the risk that is presented by the customer. Additional checks include: verification of identity using a further identification method that is listed in Section 4.3.2 of the Handbook for Regulated Businesses; obtaining copies of identification documents certified by a suitable certifier;¹¹ requiring the first payment for the product or service to be drawn on an account in the name of the customer at a bank that is subject to similar CDD standards; or telephone contact with the applicant.

470. Many financial-service relationships in Jersey are conducted on a non face-to-face basis. In discussions with the financial institutions, the assessors found that as such business was considered the norm in Jersey, it was typically not regarded as inherently high risk. However, a minority of the institutions interviewed said they were applying additional CDD measures to counter the risk. Overall, the assessors formed the view that nonresident non face-to-face business warranted a higher risk classification than it appeared to be receiving from the majority of financial institutions interviewed.

3.2.2. Recommendations and Comments

R.5

- The authorities should conduct a risk-based review of the current scope of the concessions allowing reliance on third parties to conduct CDD and limit their availability to be strictly consistent with the FATF Recommendations.
- Should the authorities decide to continue allowing source of funds to be used as a principal basis for verification of identity in certain low-risk circumstances, the requirements should be tightened further to eliminate any remaining risk of abuse for ML or FT purposes.

¹¹ A suitable certifier must be subject to professional rules of conduct which provide comfort to the integrity of the certifier. See Handbook for Regulated Businesses - Section 4.8.1.

- The authorities should review the permitted exemptions from CDD measures in Article 18 of the MLO to ensure that financial institutions must determine that the customer's country of residence is in compliance with and has effectively implemented the FATF standards.
- The authorities should amend their requirements to ensure that all concessions from conducting full identification measures are conditioned on the absence of specific higher risk scenarios.
- The authorities should expand the current list of categories of higher-risk customers in the MLO to which enhanced CDD must be applied and consider including, for example, private banking and nonresident customers.
- The JFSC should conduct a risk-based review of the use by relevant persons of the scope to defer completion of full identification requirements under Article 13(4) of the MLO and issue further guidance as needed to limit the practice.
- The authorities should amend CDD requirements and guidance as necessary to ensure that, in addition to trusts, all other forms of legal arrangement are addressed adequately and consistently.
- The authorities should amend their requirements to clarify that, when utilizing the concession permitting an employee of a relevant person to act on behalf of its customer, the relevant person must verify the employee's authority to so act.

R.6

- The JFSC should, including through its on-site examination program, continue to seek effective implementation by financial institutions of the latest CDD requirements for PEPs.

R.8

- The authorities should issue more detailed guidance on the specific ML and FT risks of new and developing technologies, including for example in relation to e-money and e-commerce.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> • Available concessions from conducting full CDD represent an overly-generous implementation of the FATF's facility to apply reduced or simplified measures for certain low-risk scenarios. • Some concessions are available where the financial institution is not required to determine that the customer resides in a country that is in compliance with and has effectively implemented the FATF standards. • Some exceptions from conducting full CDD are not conditioned on the absence of specific higher risk scenarios.

		<ul style="list-style-type: none"> • Current list of high-risk customers in the MLO omits some significant high-risk business categories of relevance in Jersey. • Tighter implementation needed regarding timing of completion of CDD measures for existing customers.
R.6	LC	<ul style="list-style-type: none"> • Implementation of latest requirements for PEPs not yet fully effective in some financial institutions.
R.7	C	
R.8	LC	<ul style="list-style-type: none"> • Limited guidance on specific ML and FT risks of new technologies, including in relation to e-money and e-commerce.

3.3. Third Parties And Introduced Business (R.9)

3.3.1. Description and Analysis

Introduction

471. As noted above, Article 16 of the MLO permits financial institutions and other relevant persons to establish a business relationship or carry out a one-off transaction (a) with an intermediary¹² on behalf of a third party, or (b) with a customer introduced to the relevant person by an “introducer,”¹³ and rely on the identification measures performed (including documentation collected and retained) on that third party or introduced customer by the intermediary or introducer, subject to specified conditions. Article 17 of the MLO provides a concession, available under more limited conditions, for relevant persons to establish relationships with intermediaries on behalf of undisclosed third parties. That latter concession is discussed above under Recommendation 5.

Legal Framework:

472. Article 16 of the MLO applies in the case of an intermediary who acts as a customer to a relevant person for a third party (underlying customer) or a customer that is introduced to a relevant person by another person—the “introducer”—and sets out the circumstances in which a relevant person may place reliance on an intermediary or introducer to conduct CDD. In order to place reliance, a relevant person must determine under Article 16(1) of the MLO that it is appropriate to do so, and Section 4.10.1 of the Handbook for Regulated Businesses sets out the factors to be taken into account in the risk assessment. In addition, an introducer must consent to being relied on and must confirm

¹² MLO Article 16(6)(a) defines an intermediary as a person who establishes a business relationship or carries out a one-off transaction with a relevant person on behalf of that person’s customer so that the intermediary becomes the relevant person’s customer.

¹³ MLO Article 16(6)(b) defines an introducer as a person who has a business relationship with a customer and who introduces that customer to a relevant person with the intention that the introducer’s customer also becomes a customer of the relevant person.

that the customer that is introduced is an established customer. Reliance may be placed on the intermediary to have conducted the identification procedures that are described in Article 3(2)(b) or on the introducer to have conducted the identification procedures that are described in Article 3(2)(a) to (c) of the MLO—elements of the CDD process that are covered by criteria 5.3 to 5.5 (but not 5.6). The result of this is that the relevant person may not rely on the intermediary or introducer for information regarding the purpose and intended nature of the business relationship. However, this information would still be required by operation of MLO Articles 13 and 3(2)(d).

Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

473. In order to place reliance on an intermediary or introducer under Article 16(4)(d) or (c)(ii), respectively, of the MLO, a relevant person must obtain in writing “sufficient information” about the third party for whom the intermediary is acting and any beneficial owner or controller of such third party (under Article 16(4)(d)), or about an introduced customer and any beneficial owner or controller of the introduced customer, any third party for whom the introduced customer is acting, any beneficial owner or controller of a third party for whom the introduced customer is acting, and any person purporting to act on behalf of an introduced customer (under Article 16(4)(c)). Section 4.10.3 of the Handbook for Regulated Businesses states (in Regulatory Requirements) that, for a relevant person to demonstrate that it has obtained “sufficient information” about an introduced customer, it must obtain a “customer information profile—in line with the guidance for individuals, trustees and legal bodies set out in Sections 4.3 to 4.5.” This section provides further that the “information provided in the profile will depend on the relevant person’s assessment of the risk presented by a particular individual, trustee or body.” The Handbook for Regulated Businesses contains as Appendix C “Equivalent Intermediary/Introducer Certificate To Be Provided to Relevant Person,” and states in Section 4.10.3 (Guidance Notes) that it is a “template customer information profile setting out customer information to be collected for intermediary and introduced relationships.”

474. The assessors note that there is no explicit requirement in Article 16 that the relevant person must obtain the identification information about the underlying or introduced customer immediately from the intermediary or introducer, as required for full compliance with the criteria of Recommendation 9. However, the authorities point out that the effect of Articles 13 and 3 is that this information must be obtained before the establishment of a business relationship.

475. Where it is intended to place reliance on an intermediary or introducer to apply identification procedures on any subsequent changes to any of the required CDD information, then under Section 4.10.3 of the Handbook for Regulated Businesses (Regulatory Requirement) “sufficient information” must also include the relevant person being satisfied that the intermediary or introducer will notify the relevant person of any material changes to the customer information.

Availability of Identification Data from Third Parties (c. 9.2):

476. In order to place reliance on an intermediary or introducer, under Article 16(4)(b) of the MLO a relevant person must obtain “adequate assurance” in writing from the intermediary or introducer that the introducer has completed the identification measures on the customer, that it holds the evidence of identification and the records of such evidence, that it will provide access to the evidence to the relevant person without delay upon request, and that (in the case of an introducer) the introduced customer is an established customer of the introducer. Article 16(7) of the MLO states that assurance is adequate if (a) it is reasonably capable of being regarded as reliable, and (b) the person

relying on it is satisfied that it is reliable. Section 4.10.3 of the Handbook for Regulated Businesses states (in Guidance Notes) that a relevant person may demonstrate that an intermediary or introducer will provide CDD evidence without delay if it requires the intermediary or introducer to provide such evidence within five working days of a request, and that the relevant person can demonstrate adequate access to such evidence from an intermediary or introducer in a jurisdiction known for strict secrecy provisions, by periodically requesting such evidence be provided (and it is provided). The assessors find that, in the case of intermediaries or introducers located in such jurisdictions, guidance is not adequate to address the risks presented by such situations. In addition, utilization of the concession should also be conditioned on an agreement by the introducer to immediately transfer the CDD evidence to the relevant person upon cessation of business.

477. The assessors note that there is no requirement that a relevant person perform spot testing by requesting that an intermediary or introducer provide CDD information regarding underlying or introduced customers from time to time. Although not required by the FATF recommendations, this would be an effective means of ensuring the availability of CDD information.

Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3):

478. In order to place reliance on an intermediary or introducer under Article 16(4)(a) of the MLO, a relevant person must know or have reasonable grounds for believing that the intermediary or introducer is a person in respect of whom the JFSC discharges functions under the SBL or a person that carries on equivalent business.¹⁴ As noted in Section 4 of this report, the JFSC has only recently extended AML/CFT regulation to certain DNFBPs, including lawyers and accountants. Therefore, although these groups may technically fall within the scope of the concession, it is not appropriate for a financial institution to use them as intermediaries or introducers until such time as their AML/CFT requirements have been demonstrated to have been fully implemented. However, this concern is mitigated to some extent by the regulatory requirement that a relevant person must perform a risk assessment on the intermediary or introducer to determine whether it is appropriate to rely on them. Among the factors to be considered are the stature and regulatory track record of the intermediary or introducer, the adequacy of the AML/CFT framework and supervisory regime in its jurisdiction and period of time it has been in place, the adequacy of its AML/CFT measures, and previous experience and nature of business conducted with the intermediary or introducer. (Handbook for Regulated Businesses, Section 4 Paragraphs 153, 154.)

479. Article 5 of the MLO requires, *inter alia*, that an equivalent business must be subject to requirements to prevent money laundering that are consistent with those in the FATF Recommendations in respect of its business and must be supervised for compliance with those requirements by an overseas regulatory authority. This means an authority discharging a function that is the same or similar to a function of the JFSC in respect of preventing and detecting ML.

¹⁴ The MLO defines an “equivalent business” in Article 5 as a business carried on in a country other than Jersey that (i) if carried on in Jersey would be a financial services business of that category, (ii) may only be carried on in that country by a person who must register or qualify to carry on that business, (iii) is subject to requirements to forestall and prevent money laundering in that country consistent with the FATF recommendations for that type of business, and (iv) is supervised for compliance with such requirements by a regulatory authority in that country.

480. Within the context of this general concession permitting reliance on an intermediary or introducer to perform CDD (i.e., obtain and verify identity information regarding an underlying or introduced customer), the Handbook for Regulated Businesses permits deviations from the requirements of Article 16 in two situations: Section 4.10.4, which permits reliance on a group intermediary or introducer that does not satisfy the direct application of the “equivalent business” standard (discussed in next paragraph); and Section 4.10.5, which permits reliance on an intermediary in certain situations where the underlying customer is not identified to the relevant person (discussed in second to next paragraph).

481. Section 4.10.4 of the Handbook for Regulated Businesses (in Guidance Notes) contains a concession from the foregoing requirement that an intermediary or introducer must carry on equivalent business. It permits a relevant person to rely on an intermediary or introducer that is a branch or subsidiary in the same group as the relevant person and is registered to carry on financial services business in another country but is not directly subject to requirements to prevent money laundering consistent with the FATF Recommendations, so long as the intermediary or introducer is subject to supervision for compliance with group requirements to prevent money laundering by a foreign regulatory authority, and the group's parent meets the conditions required of an "equivalent business" described above. The assessors do not think that a branch or subsidiary that is not directly subject to requirements consistent with the FATF Recommendations is effectively "regulated and supervised" for compliance with CDD requirements within the meaning of Recommendation 9, notwithstanding that it may be subject to group requirements. Accordingly, the assessors find that the definition of “equivalent business” in MLO Article 5, as interpreted by Section 4.10.4 of the Handbook for Regulated Businesses, is not fully consistent with Recommendation 9.

482. Section 4.10.5 of the Handbook for Regulated Businesses sets out (in Guidance Notes) certain situations where the relevant person provides a “low-risk product” or the product controlled or distributed by the intermediary presents a lower risk, such that the relevant person need not obtain identity information regarding each underlying customer for whom the intermediary acts. This occurs under Article 16 when the intermediary is itself subject to the MLO (i.e., is a relevant person), in cases of: (i) investment products controlled or administered by the intermediary that are closed-ended and where the proceeds of the investment are received from and returned to the investor (and not third parties); (ii) employee benefit schemes that are administered by the intermediary, funded either by the sponsor or by payroll deductions and for the benefit of the employees of the sponsor; and (iii) pooling of funds by the intermediary for specified purposes, including (among others) facilitation of immovable Jersey property transactions, and certain situations where funds are being held for a temporary period on an undisclosed basis pending transfer to another account. Use of Section 4.10.5 is also permitted when the relevant person accepts an aggregated deposit of customer funds from a bank account in the name of a Jersey regulated person or a financial services business regulated by the Guernsey Financial Services Commission or the Isle of Man Financial Supervision Commission, where the funds (and any income) may only be returned to the bank account from which they originated. Finally, this exception may be utilized where the customer is a Jersey law firm and the relevant person confirms that the funds relate to immovable Jersey property transactions. (This provision became redundant when lawyers in Jersey became subject to the SBL in September 2008.) The assessors agree that the particular products appear to be low risk and understand that these concessions are based upon the requirement in Article 16(4)(d) of the MLO that the relevant person obtain “sufficient information about the customers from whom the intermediary is acting to enable the relevant person to assess the risk of money laundering involving that customer.” The assessors

also concur that the Handbook for Regulated Businesses (in Guidance Notes) is interpreting what may constitute “sufficient information about the customers” in these circumstances.

Adequacy of Application of FATF Recommendations (c. 9.4):

483. As noted above, an equivalent business must be subject to requirements to prevent money laundering that are consistent with the FATF Recommendations. In determining whether a jurisdiction’s requirements to combat money laundering or terrorist financing are consistent with the FATF Recommendations, Section 1.7.2 of the Handbook for Regulated Businesses, entitled “equivalent jurisdictions,” includes a reference to Appendix B, which contains a nonexclusive list of countries that the JFSC considers equivalent jurisdictions, and Section 1.7.3 includes factors that the JFSC will consider (and that relevant persons are to consider) in determining equivalence. These include whether requirements are established by law, regulation, or other enforceable means; whether the jurisdiction is a member of the FATF, a Member State of the EU, a member of the European Economic Area, or another Crown Dependency; the legislation and other requirements in place in that jurisdiction; recent independent assessments of the jurisdiction’s framework to combat ML and FT, such as those conducted by the FATF, the World Bank and the IMF; and other publicly available information concerning the effectiveness of a jurisdiction’s framework.

Ultimate Responsibility for CDD (c. 9.5):

484. Article 16(1)(b) of the MLO provides that, despite reliance being placed on the intermediary or introducer, the relevant person remains liable for any failure to apply identification measures.

Effectiveness of implementation

485. From discussions with financial institutions and other relevant persons, the assessors were given to understand that intermediated and introduced business was an important source of new and continuing business for Jersey and that the facility to place reliance on intermediaries and introducers to conduct elements of the required CDD was seen as significant in terms of efficiency. However, the manner of use of the concession and the extent of its use varied across institutions, with some institutions opting to replicate the full CDD measures as part of the client acceptance policy, while others appeared to place maximum reliance on the intermediary or introducer.

486. Among the factors¹⁵ which may determine the effectiveness of implementation of the concession are the following:

- With the inclusion of certain Jersey-regulated DNFBPs within the potential scope of the concession, as noted in section 4 of this report, the AML/CFT measures for a number of relevant categories of DNFBP in Jersey (particularly lawyers and accountants) had only recently been introduced and the effectiveness of their implementation had not been tested in practice.

¹⁵ The authorities point out that these and other factors should be taken into account in the risk assessment mandated by Article 16(1) of the MLO.

- Difficulty may arise in practice in determining whether a foreign introducer is, in reality, regulated and supervised specifically for AML/CFT purposes (rather than for prudential or market practice purposes).

487. Overall, while pragmatic and broadly in line with the terms of Recommendation 9, the application of the concession for introduced business has the potential to increase reputational risk for Jersey and its financial institutions and warrants close monitoring.

3.3.2. Recommendations and Comments

- The authorities should explicitly require that a relevant person must obtain all necessary CDD information from the intermediary or introducer immediately and should consider requiring relevant persons to perform spot-testing of an intermediary or introducer's performance of CDD obligations.
- The authorities should limit the concession allowing financial institutions to rely on intermediary or introducers to conduct CDD in the following cases:
 - intermediaries or introducers outside Jersey that could be legally restricted in providing CDD evidence to Jersey institutions, and
 - certain domestic DNFBPs until newly-introduced AML/CFT requirements have been fully implemented.
- The authorities should eliminate the concession in the Handbook for Regulated Businesses permitting reliance on an intermediary or introducer that is a group member not itself subject to, nor supervised for compliance with, CDD requirements compliant with Recommendation 5.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	PC	<ul style="list-style-type: none"> • No explicit requirement that relevant persons obtain immediately certain CDD elements from intermediaries and introducers. • No provisions adequately addressing risk that intermediaries and introducers in secrecy jurisdictions may have barriers to providing CDD evidence. • Concession permitting reliance on certain categories of DNFBPs as intermediaries or introducers not appropriate until their AML/CFT requirements are fully implemented. • Concession permitting reliance, as intermediary or introducer, on branch or subsidiary group member not regulated and supervised in accordance with FATF recommendations is not consistent with Recommendation 9.

3.4. Financial Institution Secrecy or Confidentiality (R.4)

3.4.1. Description and Analysis

Inhibition of Implementation of FATF Recommendations (c. 4.1):

488. Although there are no statutory financial institution secrecy provisions under Jersey law that would inhibit the implementation of the FATF Recommendations, there is however, strict application by financial institutions of the common law duty of confidentiality in respect of their client information, subject to exceptions for specified purposes. These exceptions known as the Tournier principles and based upon the leading U.K. case *Tournier .v. National Provincial and Union Bank of England* (1924), arise where the disclosure is required by statute, there is a public duty to disclose, disclosure is in the financial institution's interest, or there is express or implied customer consent.

Provisions relevant to AML/CFT include the following:

489. Articles 34D of the POCL, 40A of the DTOL, and 23 of the TL each make it an offense not to report knowledge or suspicion of laundering the proceeds of criminal conduct and are the primary provisions under which financial institutions report suspicions to the JFCU. This topic is discussed in detail in the assessment of Recommendation 13 and elsewhere in Section 3 of this report, including the powers of law enforcement agencies and the JFCU in particular to gain access to confidential client information for purposes of their investigations. In brief, a court order ("production order") or warrant is required for such access, thus overriding the duty of confidentiality. This is provided for in Article 41A of the POCL, Article 42 of the DTOL, and Article 31 of the TL. In addition, all three laws make provision for the JFCU to access customer information and to monitor transactions over accounts (Article 41A of the POCL, Article 44A of the DTOL, and Articles 32 and 33 of the TL). Article 21(4) of the MLO also provides for additional information to be provided to the JFCU where a SAR fails to include sufficient information to allow the JFCU to properly analyze the contents.

490. While there is no provision that explicitly permits financial institutions generally to provide information to each other where necessary for AML/CFT purposes, Article 22A of the MLO provides that a financial institution may disclose information for such purposes to another part of its group or network, where appropriate to do so for the purpose of preventing and detecting money laundering. In practice, financial institutions did not identify to the assessors any confidentiality-related difficulties in exchanging information between themselves for AML/CFT purposes when the exchange is conducted in accordance with normal industry practices or in the course of meeting their CDD requirements pursuant to Recommendations 7 or 9 or SR VII.

491. With regard to access by supervisory authorities to confidential information held by financial institutions and other relevant persons, the relevant provisions are contained in the SBL, which came into effect in September 2008, regulatory laws (which have been in force for a number of years), and JFSC law. Article 8 of the SBL gives the supervisor (the JFSC) or its duly authorized agent broad powers to enter the supervised person's premises, to examine the supervised person and to require the supervised person to supply information and answer questions.

492. Article 39 of the SBL authorizes the JFSC to enter into mutual assistance arrangements with overseas supervisory authorities and to conduct the investigation on behalf on another regulatory authority where requested by that authority for purposes of assisting it in the conduct of its functions.

3.4.2. Recommendations and Comments

- Provide explicitly that financial institutions do not breach their confidentiality duty in exchanging customer information between themselves for AML/CFT purposes.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> • No comprehensive exclusion from common law duty of client confidentiality to permit financial institutions to exchange information for purposes of R.7 and R.9 (other than with relevant persons or within a group).

3.5. Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1. Description and Analysis

Legal Framework:

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

493. Under Article 19(2)(b) and Article 20(3) of the MLO, a relevant person must keep a record containing details relating to each transaction carried out in the course of any business relationship or one-off transaction for a period of five years commencing with the date on which the transaction is completed. Under Article 20(5), the JFSC may notify the relevant person of a record retention period longer than five years, and such longer period shall apply instead of five years. This requirement may be applied regardless of whether the business relationship is ongoing or has been terminated.

494. Article 19(3) of the MLO requires records of transactions that are kept to be sufficient to enable the reconstruction of individual transactions. Under Section 8.3 of the Handbook for Regulated Businesses (as Regulatory Requirements), records must contain the following details:

- The name and address of the customer;
- If a monetary transaction, the kind of currency and the amount;
- If the transaction involves a customer's account, the number, name or other identifier for the account;
- The date of the transaction;
- Details of the counterparty, including account details; and
- The nature of the transaction.

Record-Keeping for Identification Data, Files and Correspondence (c. 10.2):

495. Under Article 19(2)(a) and Article 20(1) of the MLO, a relevant person must keep a record comprising:

- a copy of the evidence of identity obtained pursuant to the application of CDD measures or information that enables a copy of such evidence to be obtained; and
- all the supporting documents, data or information that have been obtained in respect of a business relationship, for a period of at least five years commencing with the date on which the business relationship ends.

496. Under Article 19(2)(a) and Article 20(2) of the MLO, a relevant person must keep a record comprising:

- a copy of the evidence of identity obtained pursuant to the application of CDD measures or information that enables a copy of such evidence to be obtained; and
- all the supporting documents, data or information that have been obtained in respect of a one-off transaction which is the subject of CDD measures, for a period of at least five years commencing with the date on which the one-off transaction is completed.

497. Under Article 20(5), the JFSC may notify to the relevant person a record retention period longer than five years, and such longer period shall apply instead of five years. Where a relevant person is an introducer or intermediary for another relevant person and has given its assurance to that relevant person that it will retain the evidence as required and make it available without delay at the request of that relevant person, it is required to do so under Article 19(5) of the MLO (added as of November 7, 2008).

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

498. Article 19(4) of the MLO requires a relevant person to keep records in such a manner that those records can be made available on a timely basis to the JFSC, Police officer or Customs officer for the purposes of complying with a requirement under any enactment

Effectiveness of implementation – R.10

499. Financial institutions interviewed during the on-site visit confirmed that they retain records of account opening and customer correspondence and of transactions for a minimum of the five period required and, for some institutions, considerably longer. No issue was identified that could present a barrier to access to this information by the JFSC or to law enforcement agencies in exercise of their powers under proper procedure. However, having regard to records that may be maintained outside Jersey arising from the use of concessions regarding intermediaries or introducers and despite being included within the scope of the mandatory risk assessment, there remains a risk in practice that such third parties might be legally restricted or experience delay in meeting their obligations to provide records to Jersey.

Obtain Originator Information for Wire Transfers - Introduction:

500. Because Jersey is in monetary union with the U.K. and its service providers make full use of U.K. domestic payment systems, in accordance with Article 18 of EU Regulation 1781/2006, the

U.K. Treasury applied to the EU for, and was granted on December 8, 2008, a derogation to be applied to EU Regulation 1781/2006.¹⁶ The derogation provides for EU member states to establish agreements with territories outside the EU with whom they share a monetary union and payment and clearing systems to allow them to be treated as if they were part of the Member State concerned, so that the reduced information requirement that is set out in the Regulation for intra-EU transfer can also apply to payments passing between that Member State and its associated territory. The derogation would not apply between that territory and any other EU Member State. The Jersey authorities are now close to concluding the necessary agreement with the U.K. which will formalize the transitional provisions that have applied since 2007 and which have allowed that payments made included reduced information. Thus, transfers within the U.K. Payment Area (the U.K., Jersey, Guernsey, and Isle of Man) are treated as domestic transfers under SR VII, but transfers between Jersey and other EU Members would continue to be treated as cross-border transfers.

501. The Jersey authorities have implemented SR VII by enacting as secondary legislation based on EU Regulation 1781/2006—WTR—which came into force in July 2007 and was updated in December 2007. The Handbook for Regulated Businesses contains a separate section with detailed guidance on the WTR. The Regulations are widely drawn and intended to cover all types of funds transfers that are made by electronic means other than those specifically exempted. The coverage includes international payment transfers made via SWIFT, EUR payment systems, and transfers within the U.K. Payment Area via the U.K. Clearing House Automated payments System (CHAPS) and the U.K. Bankers' automated Clearing Services (BACS). Consistent with the EU Regulation, the WTR does not apply to payments between financial institutions as principal or to credit/debit card transactions (Regulation 5).

Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):

502. Except for transfers within the U.K. Payment Area, Regulation 6(1) of the WTR requires the Payment System Provider ("PSP") of the payer to ensure that transfers of funds are accompanied by complete information on the payer. Regulation 6(5) of the WTR requires the PSP of the payer to keep for five years a record of complete information on the payer that accompanies a transfer of funds. For the purpose of the WTR, a reference to complete information on the payer is a reference to the payer's name, address and account number, except that:

- the payer's address may be substituted with the payer's date and place of birth, customer identification number or national identity number; and
- if the account number of the payer does not exist, the payer's PSP shall substitute it with a unique identifier, which allows the transaction to be traced back to the payer.

503. Regulation 6(2) of the WTR requires the PSP of the payer to verify, before transferring the funds, the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source. In the case of a transfer from an account, under Regulation 6(3) of the WTR the complete information on a payer shall be deemed to have been verified if the PSP of the payer is a relevant person that has complied with the CDD requirements of the MLO. In the case of a one-off transaction, under Regulation 6(4) of the WTR, the complete

¹⁶ EU Regulation 1781/2006 implements SR VII for all EU Member States.

information on the payer shall be deemed to have been verified if the transfer consists of a transaction of an amount of EUR1,000 or less, the transfer is not a transaction that is carried out in several operations that appear to be linked that together comprise an amount of more than EUR1,000, and the PSP does not suspect that the payer is engaged in ML or FT. In the case of payments within the U.K. Payment Area, Regulation 7(1) provides that the transfer of funds need only be accompanied by the payer's account number or a unique identifier allowing the transaction to be traced back to the payer.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

504. Except in the case of transfers within the U.K. Payment Area, Regulation 6(1) of the WTR requires the PSP of the payer to ensure that transfers of funds are accompanied by complete information on the payer. In the case of batch transfers, the obligation to include complete information on the payer in each transfer shall not apply in the case of a batch transfer from a single payer if the batch file contains the complete information on the payer; and the individual transfers bundled together in the batch file carry the account number of the payer or a unique identifier.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

505. In the case of transfers in the U.K. Payment Area, Regulation 7(1) of the WTR provides that the transfer of funds need only be accompanied by the payer's account number or a unique identifier allowing the transaction to be traced back to the payer. However, under Regulation 7(2) of the WTR, if the PSP of the payee so requests, the PSP of the payer shall, within three working days after the day on which the provider receives the request, make the complete information on the payer available to the PSP of the payee. Regulation 15 of the WTR, in conjunction with Articles 42 and 44A of the DTOL, Articles 40 and 41A of the POCL, and Articles 31 to 33 of the TL, provides for an order to be made by the Bailiff (Jersey's chief judge) that a PSP shall: make complete information on the payer available within such period as the order may specify; and provide records in relation to the payer.

Maintenance of Originator Information (c. VII.4):

506. Regulation 13 of the WTR requires an intermediary PSP service provider to ensure that all received information on the payer that accompanies a transfer of funds is sent with the transfer. Regulation 9(1) of the WTR requires the PSP of the payee to determine whether fields within the messaging or payment and settlement system that include information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that system. Regulation 9(2) of the WTR requires the PSP of the payee to have effective procedures in place to detect cases where there is not complete information on the payer (or that information that is required by Regulation 7 for transfers within the U.K. Payment Area is missing).

507. Regulation 14(6) of the WTR provides that an intermediary PSP which has used a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds shall keep for five years records of all information on the payer that it has received.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

508. Regulation 9(1) of the WTR requires the PSP of the payee to determine whether fields within the messaging or payment and settlement system that include information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that system. Regulation 9(2) of the WTR requires the PSP of the payee to have effective procedures in

place to detect cases where there is not complete information on the payer (or that information that is required by Regulation 7 for transfers from the U.K. Payment Area is missing). Paragraph 38 of the wire transfers section of the Handbook for Regulated Businesses (regulatory requirement) requires a relevant person that is a PSP to subject incoming payment traffic to an appropriate level of post-event risk-based sampling to detect non-compliant payments. Regulation 10(1) of the WTR provides that if the PSP of the payee becomes aware that information on the payer required by the WTR is missing or incomplete when receiving transfers of funds, the PSP of the payee shall: reject the transfer; ask for the complete information on the payer; or take another action that is specified by an Order of the Minister for Treasury & Resources. Provision for additional action or steps to be taken in Regulation 10(1) followed industry concern that the use of GB International Bank Account Numbers (IBAN) by banks in the Channel Islands would not permit PSPs in EU member states to distinguish between intra-EU transfers (to the U.K.) and cross-border transfers (to the Channel Islands) - resulting in a significant volume of incoming transfers failing to include complete information. In practice, this has not proved to be a problem since routing is, in fact, dependent upon a bank's Bank Identification Code (BIC) rather than customer IBANs, and JE or GU BICS tend to be used in the Channel Islands, rather than GB BICs. Consequently, no additional action or steps have been permitted, nor is it likely that any will. Under Regulation 10(3) of the WTR, if the PSP of the payer regularly fails to supply the information on the payer required by the WTR, the PSP of the payee must report that fact to the JFCU and the JFSC. Under Regulation 10(4) of the WTR, if the PSP of the payer regularly fails to supply the information on the payer required by the WTR, the PSP of the payee must take steps to ensure that the PSP of the payer complies with the requirements to supply information, which may include: issuing warnings to the PSP of the payer; and setting deadlines for the PSP of the payer to comply with the requirements as to supply of information. Under Regulation 10(5) of the WTR, if, after the PSP of the payee has taken steps, the PSP of the payer is still regularly not providing complete information, it must either: reject any future transfers of funds from that PSP; or decide whether or not to restrict or terminate its business relationship with the provider. Regulation 11 of the WTR provides that, where there is missing or incomplete information on the payer in a transfer, and where the PSP knows or suspects, or has reasonable grounds for suspecting, that a person is engaged in money laundering in whole or in part because information on a transfer is missing or incomplete, it must report that knowledge or suspicion to the JFCU.

Monitoring of Implementation (c. VII.6):

509. Regulation 14A of the WTR charges the JFSC with effectively monitoring PSPs and taking necessary measures for the purpose of securing compliance with the requirements of the WTR. Regulation 14B sets out the powers that are available to the JFSC to monitor compliance. This includes the power to: Require a PSP to provide information or documents and to answer questions (Regulation 14B(2)); Appoint an inspector to investigate and report to the JFSC (Regulation 14B(3)); Enter and search premises with a Police officer (Regulation 14B(6)). Regulation 14B also provides the JFSC with a gateway through which to pass information to other supervisors. In 2008, 16 risk-themed examinations of banks were conducted covering corporate governance, CDD requirements, monitoring, reporting and compliance with the WTR.

Application of Sanctions (c. VII.7: applying c.17.1 – 17.4):

510. Regulation 14C of the WTR sets out the offenses that apply under the WTR where there is failure to follow a requirement set out therein. Regulation 14D of the WTR sets out the penalties attached to offenses, typically imprisonment for two years and an unlimited fine. In addition, where a

PSP fails to comply with a Regulatory Requirement that is set out in the wire transfers section of the Handbook for Regulated Businesses, the JFSC may use the powers that are set out in the SBL. These powers include the power to: Impose a condition on a license (Article 17(3) of the SBL); issue a direction (Article 23 of the SBL); and issue a public statement (Article 26 of the SBL). These powers largely mirror those that are also available to the JFSC under the BBJL and FSJL (which cover PSPs). In addition, the JFSC has a power to revoke a PSP's license to operate under the BBJL (in the case of a PSP that is a deposit-taker) or FSJL (in the case of a PSP that is a money service business). This is because failure to follow Codes of Practice that are issued under the BBJL or FSJL provides a ground for revoking a license (and it is a requirement of such Codes of Practice that any requirements that are set out in Codes of Practice issued under the SBL must be followed). In the case of a PSP that is not required to register under the BBJL or FSJL (see 3.10 - criterion 3.11.1) the JFSC may direct that PSP to cease its activities.

Additional elements: elimination of thresholds (c. VII.8 and c. VII.9) (c. VII.8 and c. VII.9):

511. There is no requirement in place to require all incoming or outgoing cross-border transfers under EUR/USD1,000 to contain full and accurate originator information (other than in cases where a transaction is carried out in several operations that appear to be linked that together comprise an amount of more than EUR1,000 or the PSP suspects money laundering).

Effectiveness of implementation

512. At the time of the on-site visit, the Jersey banks were already operating on the basis of the (then-pending) EU derogation. In interviews, the banks confirmed that their policy was to provide full originator information with all outgoing wire transfers, but transfers to the U.K., Isle of Man, and Guernsey were treated as domestic and put through the U.K. clearing system. As is normal for transactions of that nature, full originator information did not accompany the transfers (though either a name or unique identifier was being provided).

513. While, under SR.VII, the primary responsibility for providing originator information rests with the remitting bank, the recipient bank also has secondary responsibilities on receipt of wire transfers omitting full originator information. In discussions with banks, a number indicated that their procedure is limited to spot checking the incoming transfers for originator information. It was not clear how many such transfers were followed up and whether any were held pending the provision of originator details. Some banks explained that they monitored patterns of missing details and could follow up with banks that were habitual offenders. In the assessors' view, this approach falls short of the "effective risk-based procedures for identifying and handling" such transfers, as called for by SR.VII.

3.5.2. Recommendations and Comments

R.10

- [none]

SR.VII

- The authorities should take steps to ensure a stricter approach by Jersey financial institutions when dealing with incoming wire transfers that lack originator information.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	C	
SR.VII	LC	<ul style="list-style-type: none"> • Liberal interpretation by financial institutions of the risk-based approach in dealing with incoming wire transfers that lack full originator information.

3.6. Monitoring of Transactions and Relationships (R.11 & 21)**3.6.1. Description and Analysis**

Legal Framework

514. Pursuant to Article 15(1)(b) of the MLO, a relevant person must apply on a risk-sensitive basis enhanced CDD measures in any situation which by its nature can present a higher risk of ML. Article 11(1) of the MLO requires a relevant person to maintain appropriate policies for the application of CDD measures, which must have regard to the risk of ML and FT. Section 5 of the Handbook for Regulated Businesses addresses monitoring of activity and transactions.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

515. Article 15(1)(b) of the MLO provides that a relevant person must apply on a risk-sensitive basis enhanced CDD measures in any situation which by its nature can present a higher risk of money laundering or (by definition) terrorism financing. Article 11(1) of the MLO requires a relevant person to maintain appropriate policies and procedures for the application of CDD measures, which must have regard to the risk of money laundering and terrorism financing. In particular, under Article 11(3) of the MLO, policies and procedures must provide for the identification and scrutiny of complex or unusually large transactions, and unusual patterns of transactions which have no apparent economic or visible lawful purpose. Section 5 of the Handbook for Regulated Businesses addresses monitoring of transactions. Section 5.2 states (in Regulatory Requirements) that, when conducting monitoring procedures, more intensive scrutiny must be devoted to higher-risk customers and activity, including (among other examples) complex transactions, unusual large transactions, and unusual patterns of transactions that have no apparent visible lawful purpose.

Examination of Complex & Unusual Transactions (c. 11.2):

516. Section 5.2 of the Handbook for Regulated Businesses provides (in Regulatory Requirements) that the monitoring procedures of a relevant person must examine complex transactions, unusual large transactions, and unusual patterns of transactions which have no apparent economic or visible lawful purpose, to determine their background and purpose, to establish whether

there is a rational explanation for these transactions, and to document these findings in writing. Such records would be subject to the recordkeeping requirements contained in Article 20 of the MLO, which are described in the following paragraph.

Record-Keeping of Findings of Examination (c. 11.3):

517. Under Article 19(2)(a) and Article 20(1) of the MLO, a relevant person must keep a record comprising all the supporting documents, data or information that have been obtained in respect of a business relationship for a period of at least five years commencing with the date on which the business relationship ends. Under Article 19(2)(a) and Article 20(2) of the MLO, a relevant person must keep a record comprising all the supporting documents, data or information that have been obtained in respect of a one-off transaction which is the subject of CDD procedures for a period of at least five years commencing with the date on which the one-off transaction is completed. Under Article 19(2)(b) and Article 20(3) of the MLO, a relevant person must keep a record comprising details relating to each transaction carried out in the course of a business relationship or one-off transaction. In relation to each transaction, it must keep the records for a period of five years commencing with the date on which all activities taking place within the course of the transaction were completed. In furtherance of these requirements, Section 8.4.3 of the Handbook for Regulated Businesses provides (in Regulatory Requirements) that a relevant person must keep adequate and orderly records containing the findings of reviews of complex transactions, unusual large transactions, and unusual patterns of transactions which have no apparent economic or visible lawful purpose, for the respective periods referenced above.

Effectiveness of implementation

518. In discussions with the financial institutions, the assessors found that all had developed or were in the course of developing risk-based policies that included special attention to unusual transactions and patterns of transactions. Material transactions that were inconsistent with the customer profile were identified, considered, and queried where warranted.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

519. Article 15(1)(b) of the MLO (effective November 7, 2008) requires that a relevant person must apply on a risk-sensitive basis enhanced CDD measures in any situation which by its nature can present a higher risk of ML. Article 11(1) of the MLO requires a relevant person to maintain appropriate policies for the application of CDD measures, which must have regard to the risk of ML and FT. Section 5 of the Handbook for Regulated Businesses addresses monitoring of activity and transactions.

520. Article 15(1)(a) of the MLO states that a relevant person must apply on a risk-sensitive basis enhanced CDD measures in certain specified situations. These include, pursuant to Article 15(3A) (effective November 7, 2008) where a relevant person has, or proposes to have, a business relationship with, or proposes to carry out a one-off transaction with, a person (which term includes both legal persons and financial institutions) connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations. In addition, Article 11(3)(d) (effective November 7, 2008) requires that relevant persons must have appropriate policies and procedures for, among other things, determining whether a business relationship or transaction, or proposed business

relationship or transaction, is with a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations.

521. Section 3 of the Handbook for Regulated Businesses deals with factors to consider when establishing a business relationship or conducting a one-off transaction. In addition to considering countries or territories which do not, or insufficiently, apply the FATF Recommendations and those subject to EU or UN sanctions, Section 3.3.4.1 says that the following countries may also be considered to present a higher risk, those that have high levels of organized crime, those that have strong links with terrorist activities, and those which are vulnerable to corruption. Section 5 of the Handbook for Regulated Businesses addresses monitoring of transactions. Section 5.2 states (in Regulatory Requirements) that, when conducting monitoring procedures, activity and transactions connected with jurisdictions which do not, or insufficiently apply, the FATF Recommendations must be considered to be higher risk activity and transactions.

522. Section 5.2.1 of the Handbook for Regulated Businesses states that, in determining which jurisdictions do not, or insufficiently apply, the FATF Recommendations, a relevant person may consider findings of reports conducted and published by the FATF, FATF-style regional bodies, the Offshore Group of Banking Supervisors (OGBS), the IMF, and the World Bank. It makes reference to Appendix D. Appendix D to the Handbook for Regulated Businesses provides details of jurisdictions that are covered by a FATF statement or statement made by one or more jurisdictions, with respect to the regime to combat money laundering or and terrorist financing, plus any associated public statement. The table is updated as and when the JFSC becomes aware of any necessary amendments.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

523. Section 5.2 of the Handbook for Regulated Businesses provides (in Regulatory Requirements) that the monitoring procedures of a relevant person must establish whether there is a rational explanation (an apparent economic or visible lawful purpose) for activity and transactions that are connected with jurisdictions which do not, or insufficiently apply, the FATF Recommendations, and document these findings in writing. Under Articles 19(2)(a) and 20(1) of the MLO, a relevant person must keep a record comprising all the supporting documents, data or information in respect of a business relationship for a period of at least five years commencing with the date on which the business relationship ends. Under Articles 19(2)(a) and 20(2) of the MLO, a relevant person must keep a record comprising all the supporting documents, data, or information in respect of a one-off transaction which is the subject of CDD measures for a period of at least five years commencing with the date on which the one-off transaction is completed. In furtherance of these requirements, Section 8.4.3 of the Handbook for Regulated Businesses provides (in Regulatory Requirements) that a relevant person must keep adequate and orderly records containing the findings of reviews of activity and transactions connected with jurisdictions which do not, or insufficiently, apply the FATF Recommendations.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

524. Article 23C of the MLO (effective November 7, 2008) authorizes the Minister to direct any relevant person to do, or not to do, certain things with a customer who is situated or incorporated in a country or territory that the FATF has applied countermeasures to. These include not to enter into a

business transaction or to carry out a one-off transaction; not to proceed any further with a business relationship or one-off transaction; to impose any prohibition, restriction or limitation on, or to apply enhanced CDD to, a business relationship or one-off transaction, in each case with any person situated or incorporated in a country or territory to which the FATF has applied countermeasures.

525. The assessors note that the list of possible countermeasures that the Minister may impose appears adequate, but notes that the Minister's authority to do so is subject to a country or territory to which "the FATF has applied countermeasures." This appears to be narrower than the authority to apply such measures to countries and territories that continue not to apply or insufficiently apply the FATF Recommendations.

Effectiveness of implementation

526. One of the main risk factors typically identified to the assessors by financial institutions was country risk, focusing in particular on jurisdictions known to have no or weak implementation of AML/CFT controls. Potential customers and transactions from such jurisdictions attracted particular scrutiny.

527. The authorities did not identify for the assessors any instance where they applied or sought to apply countermeasures against another jurisdiction.

3.6.2. Recommendations and Comments

R.21

- The authorities should amend the power to apply countermeasures to remove the limitation tying it to the actions of the FATF.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	C	
R.21	LC	<ul style="list-style-type: none"> • Power to use countermeasures restricted by its dependence on FATF actions.

3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

3.7.1. Description and Analysis

Legal Framework:

528. Requirements regarding the reporting of suspicion of money laundering and terrorist offenses are provided for in Articles 40 and 40A of the DTOL, Articles 34A and 34D of the POCL, and Articles 20 and 23 of the TL. Each law contains a reporting provision in respect of any person in a trade, profession, or employment, as well as provisions that apply to a relevant person and

individuals that are employed by a relevant person. The report must be made to a Police or Customs officer or to a MLRO or other designated officer in a relevant person in line with internal procedures established by an employer. In the case of a relevant person, those procedures are set out in Article 21 of the MLO. Failure to maintain such procedures constitutes an offense. Section 6 of the Handbook for Regulated Businesses also addresses reporting.

Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):

529. Provisions regarding the reporting of suspicions of money laundering and terrorism financing offenses are set out in two separate and distinct articles in each of Jersey's three relevant laws.¹⁷ With respect to financial institutions, each of Articles 34D of the POCL, 40A of the DTOL, and 23 of the TL provides that an employee of a relevant person commits an offense if he or she knows or suspects, or has reasonable grounds for knowing or suspecting, that another person: is engaged in ML or drug money laundering; or has committed an offense under any of Articles 15 to 18 of the TL, and does not report that information or other matter to a Police or Customs officer, or to a MLRO or other designated officer consistent with procedures established by his or her employer (which must be consistent with Article 21 of the MLO). Where a report is not made, then the employer (the relevant person) also commits an offense.

530. Article 21(1)(c) of the MLO sets out the reporting procedures that a relevant person is obliged to maintain under Articles 34D of the POCL, 40A of the DTOL, and 23 of the TL and failure to maintain such procedures constitutes an offense. Where a report is made then it must be to a MLRO, or other designated officer. Article 21(1)(h) of the MLO then provides for the information or other matter contained in a report to be disclosed to a "designated Police officer or designated customs officer" where the person who has considered the report knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist financing. Pursuant to Article 6 of the MLO, the JFCU has been designated as the appropriate recipient of such reports. In line with these provisions in the MLO, amendments to the POCL, DTOL, and TL have been adopted by the States that provide for a report to be made to a "designated" Police or Customs officer. The Privy Council approval of these amendments was pending at the time of the assessment, but the assessors believe that the provisions in the MLO are adequate to designate the JFCU as the reporting office.

531. The offense that arises for failing to report under the POCL applies to funds that are the proceeds of any offense in Jersey for which a person is liable on conviction to imprisonment for a term of one or more years. The offense for failing to make a report under the DTOL covers drug money laundering. Together, they cover a range of offenses in each of the designated categories of offenses under FATF Recommendation 1.

532. The assessors considered carefully whether the relevant provisions of the POCL, DTOL and TL, in creating an offense for failing to report when the required conditions are met rather than overtly requiring reporting of suspicions, are fully in line with Recommendations 13 and SR.IV, for

¹⁷ Each of Articles 40 of the DTOL, 34A of the POCL, and 20 of the TL provides that any person is guilty of an offense if (a) the person suspects money laundering or terrorist financing, (b) the suspicion arose in the course of a trade, profession, or employment other than a financial services business, and the person fails to report the suspicion to a Police Officer. These requirements are not relevant to this part of the assessment.

compliance with which only a direct reporting requirement is acceptable. In practice, the inverted nature of the reporting requirement does not appear to impact negatively on the decisions of relevant persons to report and, on balance, the assessors were satisfied that the current Jersey requirement is equivalent in law to a direct reporting requirement.

533. The assessors noted the internal reporting requirement codified in the MLO to report suspicions to the MLRO (or deputy MLRO), rather than to the JFCU, and had some reservations that the effect of the internal processes involved could be to slow down the reporting process or even in some cases deter reports from being filed. This is discussed further below in assessing the effectiveness of the current requirements.

534. Finally, Article 34D(6) of the POCL provides that a person does not commit an offense for failure to disclose information that comes to the person's attention in the course of employment in a financial services business that is required to train the employee but has failed to do so, and the training, if given, would have been material. In such a situation, the assessors understand that the institution could be subject to sanction for failing to report as well as failing to train adequately its employees.

STRs Related to Terrorism and its Financing (c. 13.2):

535. The reporting provision applies to a relevant person where he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person has committed an offense under any of Articles 15 to 18 of the TL.

536. Articles 15 to 17 of the TL make it an offense to: (a) fund-raise for the purposes of terrorism; (b) use and possess property that is used or may be used for the purposes of terrorism; and (c) enter into or become concerned in an arrangement as a result of which property is made available or is to be made available to another, where a person knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism. Article 18 of the TL makes it an offense to handle the proceeds of a terrorist offense.

537. The offense that arises from failing to make a report under the TL applies where the person has reasonable grounds to suspect, or knows or suspects, that another person has committed any of the terrorist financing offenses included in these Articles.

No Reporting Threshold for STRs (c. 13.3):

538. All suspicious transactions, including attempted transactions, must be reported under Article 34D of the POCL, 40A of the DTOL, and 23 of the TL. This is on the basis that the reporting threshold is knowing or suspecting, or having reasonable grounds for knowing or suspecting, that another person is engaged in ML or has committed an offense under any of Articles 15 to 18 of the TL; there is no need for there to be any transaction, nor is there any monetary threshold. Section 2.4 of the Handbook for Regulated Businesses (in Regulatory Requirements) contains a requirement for systems and controls to enable a relevant person to report to the JFCU when the person knows, suspects or has reasonable grounds to know or suspect that another person is involved in ML or FT, including attempted transactions. Although this explicit reference to attempted transactions is in other enforceable means, the assessors take the view that the requirement in the POCL is sufficiently clear to cover attempted transactions. Financial institutions confirmed that they consider themselves under an obligation to report suspicious attempted transactions.

Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

539. The offense for failure to report applies to all suspicious transactions, including those that involve tax, and such suspicious transactions must be reported, therefore, under Articles 34D of the POCL, 40A of the DTOL, and 23 of the TL. Article 34D of the POCL concerns the reporting of knowledge or suspicion of money laundering, which in turn is defined in Articles 32 and 33 as assisting another to retain the benefits of, or the acquisition, possession or use of, proceeds of “criminal conduct,” and criminal conduct is in turn defined as any offense for which a person is liable on conviction to imprisonment for one or more years. While there is no separate statutory offense of tax evasion per se in Jersey, failure to submit a tax return is an offense and such conduct could be (and has been) prosecuted as “serious fraud” and as such, constitutes a predicate offense for money laundering. Section 2.7.5 of Part 2 of the Handbook for Regulated Businesses explains that any fraud-related offense, including fiscal offenses (such as tax evasion) and exchange control violations, is capable of predating an offense of ML in Jersey.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

540. As described in section 2 of this report, Jersey does not require dual criminality; all predicate offenses for money laundering therefore extend to any conduct committed abroad, regardless of whether or not the conduct constitutes an offense in the country where it was committed.

Effectiveness of implementation

541. All of the financial institutions interviewed by the assessors were very familiar with their responsibilities with regard to reporting of suspicions of ML or FT to the JFCU. As can be seen from the following table (using classifications employed by the JFCU), financial institutions have been accounting for more than 60 percent of the SARs received by the JFSC in the period 2005-08. Discussions with the JFCU indicated their general satisfaction with the quantities and quality of the reports received and with the follow-up cooperation of the financial institutions.

Type of Business	2006		2007		2008	
Banks	697	67%	980	65%	849	61%
Trust Companies	216	20%	362	24%	328	23%
Investment/Fund Manager	36	3%	47	3%	34	2%
Funds	30	3%	49	3%	73	5%
Other	55	5%	79	5%	120	9%
Total	1,034		1,517		1,404	

542. With regard to the efficiency of the SAR reporting process, the internal review processes, as noted above and set out in Article 21 of the MLO, appear to have the potential to delay the submission of SARs to the JFCU. While the assessors acknowledge that care is needed on the part of the reporting institutions in determining whether transactions and events warrant reporting to the JFCU and that the process should be subject to appropriate internal controls, there were indications from discussions with financial institutions that the decision process may be taking longer (a week was indicated to the assessors in some institutions as typical unless the case was identified as urgent) than would be helpful from the perspective of the JFCU. It is the processes in each financial institution that determine the length of time taken to decide on SAR submission and the degree of

discretion allowed to staff in determining what is considered suspicious. The assessors are of the view that the system should be reviewed carefully to seek to improve overall efficiency and effectiveness.

Protection for Making STRs (c. 14.1):

543. Articles 32(3)(a), 33(5)(a), 34A(3), and 34D(9) of the POCL and Articles 37(3)(a), 38(5)(a), 40(4), and 40A(9) of the DTOL state that disclosures made thereunder shall not be treated as a breach of any restriction imposed by statute, contract or otherwise. Where a report is made under the TL, Articles 21(3) and 24 state that disclosure shall not be treated as a breach of any restriction on the disclosure of information (however imposed). Where information is provided to the JFCU in accordance with internal reporting procedures set out in Article 21(2) or (4) of the MLO, Article 37(3) of the POCL provides that disclosure shall not be treated as a breach of any restriction imposed by any enactment or contract or otherwise "or involve the person making it in any liability of any kind." Protection is available even if a person does not know precisely what the underlying criminal activity is, and regardless of whether illegal activity has actually occurred.

544. Some of the provisions listed above are particularly relevant to financial institutions and their employees, while others apply to any person in the course of a trade, profession, or employment. While financial institutions did not raise any concerns with the assessors regarding the breadth of protection afforded by these provisions in the context of reporting suspected money laundering or terrorism financing, the provisions do not comply fully with the FATF Recommendations, because there is no limitation that the protection should apply only where the report is made in good faith.

Prohibition Against Tipping-Off (c. 14.2):

545. Articles 35 of the POCL and 41 of the DTOL each provide that a person is guilty of a "tipping-off" offense if a person knows or suspects that a report has been made to a Police or Customs officer (or to a MLRO or other designated officer in line with procedures established by an employer), and that person discloses to any person information or any other matter that is likely to prejudice any investigation that might be conducted following disclosure. Each of these provisions has been amended to include within the offense a disclosure of a report that will be made, to prevent tipping off prior to the report being filed. The amendments have been approved by the States and were awaiting Privy Council approval at the time of the assessment. Article 35 of the TL provides that a person is guilty of a "tipping-off" offense if a person knows or has reasonable cause to suspect that a disclosure has been or will be made to a Police or Customs officer (or to a MLRO or other designated officer in line with procedures established by an employer), and that person discloses to any person anything which is likely to prejudice any investigation that might be conducted following disclosure.

546. Recommendation 14 states that financial institutions and their directors, officers and employees should be prohibited by law from disclosing the fact that an SAR has been filed, whereas the provisions of Jersey law referenced above base the offense on a disclosure that is likely to prejudice an investigation. The assessors have considered whether the likelihood of prejudice to an investigation would necessarily be as broad a prohibition as that required by Recommendation 14, and have concluded that the Jersey prohibition is not sufficiently broad. For example, it would seem possible for an individual to conclude, possibly even in good faith, that a disclosure would not be likely to prejudice an investigation, and prosecution in such a case could be problematic.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

547. Articles 40B of the DTOL, 29 of the POCL, and 24A of the TL provide that information disclosed in a SAR shall not be disclosed other than specifically as permitted by provisions of each of those laws. Where such disclosures are permitted, it is not JFCU practice to disclose personal details of staff of reporting institutions to overseas FIUs. Indeed, the content of SARs will be sanitized to protect the source. The one exception to this is where SARs are shared with the JFSC—where they are shared in their entirety to assist the JFSC with its statutory functions.

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

548. Jersey's AML/CFT Strategy Group last considered the feasibility of implementing a currency-reporting system in September 2007. Introduction of such a system was ruled out on the following grounds: the JFCU already receives a significant number of suspicious activity reports and a threshold-based transaction reporting system might adversely impact on its operational effectiveness—by diluting its focus to reports relating to circumstances that are considered to be suspicious merely by virtue of the amount involved; Use of automated pattern recognition software might undermine the ethos behind the Island's AML/CFT framework—which places considerable emphasis, and responsibility, on a relevant person knowing its customer well; few European jurisdictions have implemented such a system, and its effectiveness in Jersey would likely be reduced if surrounding jurisdictions did not have similar systems. Also relevant persons—most of which are subsidiaries or branches of European companies—may be resistant to incurring costs in, and devoting resources to, developing systems and procedures to accommodate such a system, where they could not rely on group expertise. Finally, the size of a transaction is only one element of risk, and the setting of a financial threshold for reporting transactions is inevitably arbitrary and would ignore other significant risks.

Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2): Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

549. Not applicable

Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):

550. As noted in the analysis of Recommendation 26, the financial institutions expressed broad satisfaction of the level of feedback they have been receiving following the submission of SARs to the JFCU. All SARs received are acknowledged. The financial institutions accept that all SARs are given consideration and informed the assessors that there is a significant level of direct follow-up with them by the JFCU with regard to individual reports. The institutions are aware that it will not be feasible in many cases for the JFCU to keep them informed of progress in any investigations that result from the submitted reports, particularly as many cases result in the matter being passed to other relevant jurisdictions. However, the financial institutions expressed appreciation for those occasions where the JFCU was in a position to inform them of the outcome of particular SAR-related enquiries. At the broader level of industry feedback on typologies, a joint JFCU, JFSC, and Law Officers' Department publication - "Typologies from a Jersey Perspective" was issued in October 2008 and includes information on typologies and trends internationally and those which are identified as emerging within the industry locally.

3.7.2. Recommendations and Comments

R.13

- The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU.

R.14

- The law should be amended to limit protection for those reporting suspicious transactions to those acting in good faith.
- The tipping-off offense should be broadened by removing the limitation referring to situations that might prejudice an investigation.

SR.IV

- The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU.

3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	LC	<ul style="list-style-type: none"> • To enhance effectiveness, there appears to be scope to improve the timeliness of SAR reporting.
R.14	PC	<ul style="list-style-type: none"> • The protection for SAR reporting is not limited to good faith reporting. • Tipping-off provision not fully consistent with international standard in being limited to situations that might prejudice an investigation
R.19	C	
R.25	C	
SR.IV	LC	<ul style="list-style-type: none"> • To enhance effectiveness, there appears to be scope to improve the timeliness of SAR reporting.

Internal controls and other measures

3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)

3.8.1. Description and Analysis

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):

551. Pursuant to Article 11(1) MLO, in order to prevent and detect money laundering (defined to include financing of terrorism), financial institutions and other relevant persons are required to maintain appropriate policies and procedures in relation to: customer due diligence measures; reporting; record-keeping; screening of employees; internal control; risk assessment and management; and monitoring and management of compliance with, and the internal communication of, such policies and procedures. Appropriate policies and procedures in this context are defined in Article 11(2) as those developed having regard to the risk of money laundering and taking into account the financial institution's type of customer, business relationships, products, or transactions. Parts 3, 4, and 5 of the MLO provide for the requirements and procedures that are to be applied in respect of customer due diligence, record-keeping, and reporting of suspicious activities. Under Article 11(9) MLO financial institutions are required to communicate from time to time these and other applicable AML/CFT requirements to those staff whose duties relate to the provision of financial services business.

552. Pursuant to Article 11(11) MLO, financial institutions must maintain adequate procedures for monitoring and testing the effectiveness of their implementation of the above policies, procedures, and training measures. Article 7 MLO requires a relevant person to appoint an individual as the Money Laundering Compliance Officer (MLCO) in respect of the financial services business carried on by a relevant person. Article 7(2A) requires the relevant person to ensure that the appointed MLCO is of an appropriate level of seniority and has timely access to all records needed to conduct the compliance function.

553. The MLCO's function is to monitor whether the enactments in Jersey relating to ML or FT are being complied with. The regulatory requirement in Section 2.3 of the Handbook for Regulated Businesses places the onus on the board of a relevant person to assess both the effectiveness of, and compliance with, systems and controls and to take prompt action to address any deficiencies. Section 2.4.2 of the Handbook sets out in the form of guidance how the board may demonstrate that it has assessed compliance. It may do so where it periodically commissions and considers a compliance report from the MLCO, the frequency of which should be determined by the board's risk assessment and consideration of any internal "cultural barriers" to a compliance mentality.

554. Section 2.5 of the Handbook for Regulated Businesses requires the MLCO to have appropriate independence, and to have a sufficient level of seniority and authority in the business. Under the regulatory laws, the JFSC may object to the appointment of a MLCO, where it considers that the candidate or incumbent is not "fit and proper". Such an assessment will take into account seniority. While Article 7 MLO does not specify that the MLCO must be at management level as required for compliance with the international standard, the essential elements of such status seem to be captured by the language of the provision.

(15.2)

555. There is no requirement in law, regulation, or other enforceable means to maintain an adequately resourced and independent audit function, as would be needed for compliance with the international standard. The role of the MLCO, as described above, would typically cover at least some of the functions of an independent audit function for AML/CFT, though not necessarily with the same degree of independence. In practice, the assessors found that most of the financial institutions interviewed were subject to detailed internal audits the coverage of which included AML/CFT policies, procedures, and sample testing of the implementation of CDD measures. In general, for

subsidiaries of nonJersey financial institutions, these took the form of periodic group internal audit visits. The assessors were informed that, in general, external auditors also included CDD and other AML/CFT matters at least to some degree as a component of the annual audit work.

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

556. While there is no requirement for an AML/CFT training program, as such, Article 11(9) MLO requires a relevant person to take appropriate measures for the purposes of making employees whose duties relate to the provision of financial services aware of the procedures required under Article 11(1) and enactments in Jersey that relate to ML and FT. Article 11(10) of the MLO requires a relevant person to provide employees with training in the recognition and handling of suspicious transactions. As a regulatory requirement, Section 7.5 of the Handbook for Regulated Businesses specifies that training must be adequate to keep staff informed of new developments and risk factors connected with ML and FT. Such training must be tailored and relevant to the employees to whom it is delivered and cover key aspects of AML/CFT legislative requirements. The Handbook for Regulated Businesses also contains detailed guidance on the scope and expected content of such training, as required to be provided to all relevant employees and explicitly in relation to the Board of the financial institution, the MLCO, and the MLRO and deputy MLROs.

557. In practice, all financial institutions interviewed during the assessment confirmed that they provide AML/CFT training to their staff, often in a range of formats that may include interactive computer-based training. All indicated that records are kept for each relevant employee of training provided and such records can be subject to review as part of audit work or in the course of JFSC on-site inspections.

Employee Screening Procedures (c. 15.4):

558. Article 11(1)(d) of the MLO provides that relevant persons must maintain appropriate (risk-based) policies and procedures for the screening of employees. Moreover, the JFSC informed the assessors that the screening of potential employees by financial institutions is considered as part its on-site supervision visits. Moreover, the matter is addressed in mandatory Codes of Practice issued under the regulatory laws which require a relevant person that is prudentially supervised to vet and monitor the probity of employees. Relevant references are: paragraph 3.7.2.4 of Codes of Practice for deposit-taking business; Paragraph 3.7.3 of Codes of Practice for insurance business; paragraph 3.3.4 of Codes of Practice for investment business; paragraph 3.3.2 of Codes of Practice for trust company business; and paragraph 3.3.1.2 of Codes of Practice for fund services business. Financial institutions interviewed confirmed that prospective employees are vetted as a matter of course.

Additional Element—Independence of Compliance Officer (c. 15.5):

559. The regulatory requirement in Section 2.5 of the Handbook for Regulated Businesses specifies that a MLCO must have appropriate independence, a sufficient level of seniority and authority within the business so that the Board reacts to and acts upon any recommendation made, and must have regular contact with and to report directly to the Board. Similarly, Section 6 of the Handbook for Regulated Businesses requires a MLRO to have appropriate independence and to be able to raise issues directly with the Board.

Summary

560. With the exception of an explicit requirement for an independent audit function, the legal framework broadly complies with Recommendation 15 and is set out in secondary legislation, supplemented by other enforceable means, and supported by relevant guidance notes. With regard to implementation, financial institutions interviewed during the assessment confirmed that they had in place AML/CFT policies and procedures, in varying levels of detail and complexity, and that they provided and kept records of regular staff training in AML/CFT. In a number of cases it was evident that the procedures draw heavily on the experience of the (U.K. or other home jurisdiction) parents of the financial institutions. The JFSC is in the process of conducting an ongoing series of AML/CFT themed inspections, the scope of which includes checking the existence and the quality of internal control policies and procedures, and the practical implementation of the resultant controls. Deficiencies and weaknesses have been identified by the JFSC in certain institutions and remedial action has been required.

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

561. With regard to financial services business carried on in a country or territory outside Jersey, financial institutions and other relevant persons are required, pursuant to Article 10A MLO, to ensure that any branch or subsidiary of that relevant person applies measures that are at least equivalent to the requirements of the MLO in respect of any financial services business to which Article 10A applies carried on by that branch or subsidiary, except to the extent that the law of the country or territory in which that person carries on a financial services business or has a subsidiary carrying on such a business has the effect of prohibiting such compliance. Should such legal barriers apply, Article 10A(7) requires the financial institution to inform the JFSC.

562. There is no explicit requirement in law, regulation, or other enforceable means for particular attention to the need to apply AML/CFT measures at least equivalent to those in Jersey in the cases of branches or subsidiaries in countries that do not or insufficiently apply the FATF Recommendations. However, Article 11(1) of the MLO requires a relevant person to maintain appropriate policies for the application of CDD measures, which must have regard to the risk of ML and FT. In particular, under Article 11(3) of the MLO, policies must provide for the identification and scrutiny of:

- Business relationships and transactions connected with countries or territories which do not or insufficiently apply the FATF Recommendations; and
- Business relationships and transactions with persons or countries or territories that are subject to measures imposed by one or more countries for insufficient or nonexistent application of the FATF Recommendations or otherwise sanctioned by the EU or UN for purposes connected with the prevention of ML and FT.

563. Pursuant to Article 10A(10), where a country or territory in which a branch or subsidiary operates has more stringent requirements than those set out in Jersey's MLO, the financial institution must ensure that those more stringent local requirements are complied with.

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):

564. As noted above, should local legal barriers prevent the application of Jersey's AML/CFT requirements in a foreign branch or subsidiary, Article 10A(7) requires that the financial institution inform the JFSC.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

565. There is no requirement in law, regulation, or other enforceable means to apply consistent CDD measures at group level for the activities of a customer with different parts of a Jersey financial services group.

3.8.2. Recommendations and Comments

R.15

- The authorities should introduce a requirement in law, regulation, or other enforceable means that, having regard to the size and nature of the business, financial institutions maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures.
- The authorities should clarify that the current provisions for timely information access for compliance officers must include customer identification data and other CDD information, transaction records, and other relevant information, including where that documentation or information is held by third parties, in or outside Jersey.

R.22

- The authorities should introduce a requirement in law, regulation, or other enforceable means for financial institutions to pay particular attention to the requirement to apply AML/CFT measures at least equivalent to those in Jersey in the cases of branches or subsidiaries in countries that do not or insufficiently apply the FATF Recommendations.
- The authorities should introduce a requirement that financial institutions must apply consistent AML/CFT requirements at group level to customers doing business with different parts of the group.

3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	<ul style="list-style-type: none"> • There is no requirement in law, regulation, or other enforceable means expressly covering AML/CFT to maintain an adequately resourced and independent audit function (having regard to the size and nature of the business). • The current requirement for timely information access for compliance officers, though drafted in broad terms, is not sufficiently detailed.

R.22	LC	<ul style="list-style-type: none"> No explicit requirement in law, regulation, or other enforceable means for particular attention to the need to apply AML/CFT measures at least equivalent to those in Jersey in the cases of branches or subsidiaries in countries that do not or insufficiently apply the FATF Recommendations.
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3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Prohibition of Establishment Shell Banks (c. 18.1):

566. Article 10(1) of the BBJL precludes the JFSC from considering an application for registration if the applicant:

- is to have no physical presence in Jersey involving meaningful decision-making or management; and
- is not subject to supervision by an overseas regulator by reason of the applicant's connection with any other institution or person.

Article 10(1) also requires the JFSC to revoke a permit where the above conditions apply.

567. The JFSC confirmed that no shell banks are established in Jersey and the assessors have no basis on which to find otherwise. Although a small number of managed banks remain authorized in Jersey, they (and the banks providing the management service) are subject to the AML/CFT and prudential requirements.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

568. Pursuant to Article 23A of the MLO, a Jersey bank must not enter into or continue a banking relationship with a shell bank.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):

569. Article 23A also provides that banks must take appropriate measures to ensure that they do not enter into, or continue, a banking relationship with a bank that is known to permit its accounts to be used by a shell bank.

3.9.2. Recommendations and Comments

- [none]

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
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R.18	C	
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Regulation, supervision, guidance, monitoring and sanctions

3.10. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17 & 25)

3.10.1. Description and Analysis

Regulation and Supervision of Financial Institutions (c. 23.1):

570. All financial institutions in Jersey are subject to AML/CFT regulation and supervision. In terms of the legal framework, all are subject to the requirements of the POCL, DTOL, TL, and MLO. In supervisory terms, Article 5 of the SBL appointed the JFSC as supervisory body for all regulated persons, supplementing the provisions already in place for purposes of licensing and prudential supervision under the regulatory laws (BBJL, IBJL, CIFJL, etc). The SBL also provided the JFSC with the power to issue mandatory Codes of Practice for the purpose of establishing sound principles for compliance with the SBL, DTOL, POCL, TL, MLO, etc., and by reference to which power (among others) the JFSC has updated the Handbook for Regulated Businesses in October 2008, with further revisions in December 2008. The SBL also empowers the JFSC to supervise compliance with the provisions of the SBL itself, the MLO, and with any Codes of Practice issued.

571. As described in this report, the JFSC has been conducting an ongoing and active program of AML/CFT on-site inspections of financial institutions. For the most part, these visits consist of themed inspections and are linked to the introduction of the risk-based approach, to the implementation of AML/CFT procedures by the financial institutions. The JFSC published in September 2008 some interim findings from its program of AML/CFT thematic inspections of banks in 2008, which are summarized as follows:

572. The JFSC reports that:

- banks have, in large part, successfully introduced approaches to the management of [ML/FT] risk that classify customers, products, transactions and jurisdictions into higher, standard and lower risk in an appropriate manner. Being part of large international groups significantly aids adherence to local laws and regulatory requirements.
- Issues relating to the collection of identification evidence are, in general, well-handled. All banks examined had in place appropriate requirements relating to gathering information on source of funds and source of wealth. However, actual performance in this respect, although satisfactory for the most part, was more variable: often within individual banks as much as between different banks.
- From the examination results to date, the JFSC has formed the view that the banking sector is in large part operating in accordance with its regulatory obligations under the respective Laws, Orders, and Codes of Practice (including the Handbook for Regulated Businesses). However, there remains significant work to be done to achieve consistent compliance with the full range of requirements of the latter.

573. Areas requiring improvement and further consideration were listed in the JFSC's report to include:

- The application by the banks of the requirement to conduct and maintain a business risk assessment for AML/CFT, for which the JFSC requires a very detailed and comprehensive risk analysis.
- Managing intermediary and introducer-sourced business, particularly historical business. There was wide divergence in the standard of due diligence applied by the banks to intermediaries in practice, even after taking into account the individual bank's assessment of inherent risk.
- A major challenge for banks is to ensure consistent and stringent application of the policies and procedures determined by the board of directors and management. In the files and reports examined, the JFSC found a significant number of examples where some part of policies and procedures had not been met.
- There may currently be large numbers of existing customers where some element of remediation will be required in respect of risk assessment and CDD.

574. Separately, the JFSC's broader inspection work in the banking area identified some weaknesses in the application of AML/CFT requirements for PEPs, which is a significant area of business in Jersey (although the category is defined in practice by the banks so widely that it includes many domestic and foreign officials and elected persons who would not generally be within the scope of PEP controls in other jurisdictions).

575. While the above analysis appears somewhat bleak, the assessors were impressed by the scope and depth of the AML/CFT onsite work conducted by the JFSC in 2008 and in previous years that identified these problems, and at their apparent willingness to tackle difficult compliance issues. The JFSC is also to be commended for placing this information in the public domain so that it can be used to guide the future work in this area of the financial institutions.

576. The assessors met, either individually or collectively in a meeting organized by the Jersey Bankers Association, with a wide cross-section of banks operating in Jersey. The bankers were well-informed on AML/CFT issues and requirements and indicated a strong commitment to compliance with the JFSC's requirements. They confirmed that programs of remediation of CDD records was ongoing, being prioritized based on their internal risk analysis; many banks indicated at the time of the on-site visit that this remediation work was well advanced. In many cases, it involved contacting customers for additional information, particularly with regard to source of wealth.

577. Overall, the assessors conclude that there is evidence of substantial ongoing improvement in the effectiveness of implementation by Jersey financial institutions of AML/CFT measures broadly in line with the international standard, and that the JFSC is setting the bar at a high level and has helpfully pointed the way forward for the institutions to further improve effectiveness.

Designation of Competent Authority (c. 23.2):

578. As stated above, the JFSC has been appointed by Article 5(1) of the SBL as supervisory body for all regulated persons for AML/CFT purposes, supplementing the provisions already in place for

purposes of licensing and prudential supervision under the regulatory laws. All categories of financial institution business defined by the FATF are covered.

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):

579. Under both the regulatory laws (for banking, insurance, and securities business) and the SBL, authorization by the JFSC in the form of registration is required in order to commence business and anyone conducting any of the activities listed in the Schedule to the SBL in the absence of a current registration is committing an offense. The Schedule corresponds to the list of financial activities in the FATF Recommendations.

580. Fit and proper tests are applied by the JFSC pursuant to Articles 13 and 14 of the SBL to an applicant for authorization to conduct any of the listed financial activities (which excludes those within the scope of the banking, insurance, and securities Core Principles—since such tests are applied under the regulatory laws). The fit and proper tests take into account those who hold ‘principal person’ and ‘key person’ roles in the applicant. Principal persons include directors and any person who, directly or indirectly, holds more than a 10 percent shareholding. Key persons comprise compliance officers, MLCOs, and MLROs. Article 14(4) of the SBL provides that a person is not fit and proper if that person has been convicted of an ML or FT offense, or of an offense involving fraud or other dishonesty, or for other reasons related to the risk of ML or FT.

581. Where a relevant person is a prudentially supervised person, then, in addition to the power to turn down an application or revoke a license on the basis that a relevant person is not fit and proper and to ban any individual from being employed by a relevant person, Article 13 of the FSJL allows the JFSC to object to the appointment or continued appointment of a principal person or key person on the basis that the person in question is not fit and proper. Similar provisions are also set out in Article 12A of the CIFJL, Article 24 of BBJL, and Article 23 of the IBJL.

582. The JFSC demonstrated to the assessors that they use these powers effectively in vetting new applicants for registration, principal persons, and key persons. As part of the available arsenal of sanctioning powers, the potential to declare a person unfit to own or control a financial institution (or other business within the scope of the JFSC’s supervision) has proven to be a powerful deterrent, and has been used in practice by the JFSC in some cases, particularly in relation to trust businesses.

Application of Prudential Regulations to AML/CFT (c. 23.4):

583. In parallel with this assessment, the Jersey financial sector has been the subject of an IMF FSAP Update Assessment, as part of which an update was conducted of the 2002/3 FSAP assessment of the Basel Core Principles and the International Association of Insurance Supervisors Principles. The findings of the update assessment are broadly positive, including for the principles of particular relevance for AML/CFT purposes. No significant deficiencies were identified.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):

584. Based on Schedule 2 of the POCL and Article 2 of the FSJL, a person carrying on the following services is a money service business (MSB) subject to the POCL and the MLO:

- a bureau de change;

- providing check cashing services;
- transmitting or receiving funds by wire or other electronic means; or
- engaging in money transmission services.

585. Unless exempted, persons carrying on money service businesses must seek registration with the JFSC. Exemptions for bureaux de change are based (primarily) on turnover in the previous 12-month period. The turnover threshold for exemption is set at under GBP300,000. The exemption threshold is designed to accommodate hotels and hospitality business that provide a small bureau de change facility for the convenience of their customers. Persons claiming the exemption must notify the JFSC.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):

586. A regulatory framework for money service businesses came into effect in July 2007 with the coming into force of the Financial Services (Amendment of Law) (Jersey) Regulations 2007, the Financial Services (Money Service Business) (Registration) (Jersey) Order 2007 and the simultaneous issuance of Codes of Practice for Money Service Business by the JFSC. This was in addition to the obligation to follow the requirements of the MLO that has applied since 1999. Under the SBL 2008, the JFSC is the AML/CFT supervisor of the money service businesses sector and AML/CFT compliance is the primary focus of JFSC supervision of the sector. Names and addresses of registered money service businesses are posted on the JFSC website.

587. The JFSC has developed internal procedures to supervise money service businesses and, since July 2007, has conducted supervisory visits to all registered independent money service businesses. In addition, it has conducted outreach programs with the sector to confirm that all parties requiring registration are aware of the requirement or the need to notify an exemption. This work has identified an incomplete understanding of AML/CFT risks among operating staff and routine problems in adapting to new systems, policies, procedures, and controls but no serious compliance issues have arisen. In discussions with the assessors, MSB contacts were generally familiar with ML and FT vulnerabilities and demonstrated awareness of their AML/CFT obligations. Administrative arrangements were in place and contacts confirmed recent JFSC supervision visits which included reviews of policies and procedures, examination of systems, and review of transactions logs.

588. Section 3.4.1.3 of the Codes of Practice requires that MSBs maintain a list containing the names of any agents it appoints to carry on money service business on its behalf and the addresses of premises from which such agents operate, and to notify the JFSC promptly in writing of any changes made to that list.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

589. All financial institutions within the FATF definition operating in Jersey are subject to JFSC regulation and supervision and to the full range of AML/CFT requirements. The relevant types of businesses are tabulated in section 1 of this report.

Guidelines for Financial Institutions (c. 25.1):

590. Under Article 8 of the JFSC Law, the JFSC has been granted general power to issue guidance to entities subject to its supervision. In the AML/CFT area, the JFSC has included in its published Handbook for Regulated Businesses guidance notes on a wide range of CDD and other relevant topics to explain and supplement the regulatory requirements. The Handbook for Regulated Businesses also includes other information resources for use, in particular, for purposes of ML and FT awareness raising and training.

591. Financial institutions confirmed that they have been actively engaged with the JFSC in providing comments on the Handbook for Regulated Businesses as part of the consultation process and that they have, to a large extent, already operationalized its provisions during the consultation period. They expressed satisfaction with the JFSC guidance and the level of access to the JFSC where clarifications are needed, and with the quality of feedback provided.

592. In the supervisory area, the JFSC is to be commended for the manner in which they publish detailed aggregate findings of their themed on-site inspections, including in 2008 dealing candidly with AML/CFT issues, as a means of providing feedback and guiding supervised institutions on areas requiring remediation or additional attention.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):

593. As confirmed in the analysis of Recommendation 23, there is in Jersey an appropriately-empowered supervisory authority in the form of the JFSC dealing with all categories of financial institutions. In addition to the powers provided to the JFSC under the regulatory laws to conduct its supervision, the SBL provides the JFSC with a number of tools and powers to monitor and ensure compliance with AML/CFT requirements by all persons covered by the SBL (including all financial institutions). Insofar as these powers relate to the conduct of on-site inspections and collection of information, they are set out in the following sections. Appropriate sanctions are available and are analyzed under Recommendation 17 of this report.

Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):

594. Pursuant to Article 8(2) of the SBL, the JFSC has a general power, that includes the AML/CFT area, to conduct reasonable routine on-site examinations of financial institutions, including requiring the financial institution to:

- supply information in a format and at times specified by the JFSC;
- provide answers to questions; and
- permit access by JFSC officers or agents to its premises.

595. The JFSC conducts three types of supervision examination of prudentially-supervised persons: discovery; risk-themed; and focused.

- Discovery visits are wide-ranging and will look to cover a prudentially-supervised person's approach to its business and governance thereof. A discovery visit might take place shortly, for example, after a person has been registered, or where senior management has changed.

- Risk-themed examinations concentrate on a specific area of conduct across a segment of the industry and tend to be preceded by a self-assessment questionnaire.
- Focused examinations tend to arise from specific events or problems that are identified.

596. Historically, on-site inspections have been conducted with the aid of comprehensive work programs (referred to as route planners), which have included consideration of ML and FT. The JFSC informed the assessors that, going forward, the focus of the JFSC's (including its AML Unit) will be on corporate governance applied by relevant persons to counter ML and FT using a comprehensive corporate governance route planner. Supervisors will base their enquiries on the route planner, which will enable them to make principles-based judgments on the areas to be focused on next and to what degree, on a risk-sensitive basis. As a matter of course, in line with the route planners, inspections comprise a review of policies and procedures and testing of implementation, including through sample testing of books, records, and customer files.

597. As noted earlier, the JFSC conducted a range of AML/CFT themed inspections of banks in 2008, the aggregate key findings of which have been summarized and published on the JFSC website (www.jerseyfsc.org). The analysis provided indicates that the inspections conducted were comprehensive and thorough. The assessors were provided with additional supporting material by the JFSC in relation to the recent inspection program, from which it was evident that the JFSC analysis is detailed and that strong emphasis is placed on providing the inspected institution with recommendations for improvement. As part of off-site supervision, there is a formal system for follow up of recommendations made from the on-site visit to ensure that all issues are addressed. The risk profile of each institution is also reviewed off-site.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):

598. As set out above, the JFSC has powers under the regulatory laws and under the SBL to enter premises, conduct inspections, and to require information to be provided and its questions answered. Under Article 30 of the SBL, a designated supervisory body may by notice in writing require a relevant person (or a "principal" or "key" person thereof) to:

- provide to it, at such time and place as may be specified, information and documents of a specified description; and
- attend at such place and time as may be specified in the notice and answer questions which the supervisory body requires the person to answer.

599. Such information, documents or questions may relate to financial services business that is carried on by a relevant person, compliance with the SBL or with any Codes of Practice made thereunder, a condition of any grant of registration, or a direction given under the SBL. This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis a relevant person has made to detect unusual or suspicious transactions.

600. Any person who without reasonable excuse fails to comply with a requirement under Article 30 of the SBL shall be guilty of an offense and liable to imprisonment for a term of six months and an unlimited fine. The JFSC does not need a court order to compel production of information or documentation or to gain access to premises.

Powers of Enforcement & Sanction (c. 29.4):

601. A range of possible statutory powers and sanctions is available to the JFSC both under the regulatory laws and the SBL to address failures by financial institutions, their directors, or their management to implement Jersey's AML/CFT requirements. These include the power under Article 18 of the SBL to revoke a registered person's license, or to refuse to grant a license under Articles 14 or 15. Conditions may be placed on a license pursuant to Article 17. The JFSC also has the power to issue directions under Article 23 (to instruct, for example, that something be done or that a person refrain from doing something) and to issue public statements pursuant to Article 26 that warn the public and/or censure a relevant person subject to the Act. Under Article 24, the JFSC may also apply to the Royal Court seeking an injunction restraining a relevant person from committing a contravention or to remedy a contravention of the requirements; or seeking an order making the relevant person subject to such supervision, restraint, or conditions as the Court may specify.

602. The application of these sanctioning powers includes within its scope not just the financial institution but also its directors, owners/controllers, managers, or other officers. Where an offense is committed under the SBL, Article 42(1) provides that, where an offense committed by a person is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is, or was, a principal person in relation to that person, that principal person shall be guilty of the offense and liable in the same manner to the penalty provided for that offense. The term "principal person" is defined in Article 1(1) of the SBL and includes any director and any person who directly or indirectly holds 10 percent or more of the share capital issued by a relevant person. In addition, Article 42(2) of the SBL provides that, where an offense committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer, the person shall also be guilty of the offense and liable in the same manner as the company to the penalty provided for that offense. In addition, any person who aids, abets, counsels or procures the commission of an offense under the SBL will also be guilty of the offense and liable in the same manner as a principal offender to the penalty provided for that offense.

603. The JFSC does not have power to apply monetary fines as a form of sanction. The matter of sanctions is addressed further in the analysis of Recommendation 17.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):

Criminal sanctions

604. Pursuant to Article 40A of the DTOL, Article 34D of the POCL, and Article 23 of the TL, subject to limited exceptions, failure by an employee of a financial institution or other relevant person to make a report, where he has knowledge, suspicion, or reasonable grounds for knowing or suspecting that another person is engaged in ML or FT is an offense and may be punished by up to five years imprisonment or an unlimited fine or both.

605. Under Article 41 of the DTOL, Article 35 of the POCL, and Article 35 of the TL, the offense of "tipping-off" by a person is an offense and may be punished by up to five years imprisonment or a fine or both.

606. Under Article 37(7) of the POCL, failure by a relevant person to comply with an obligation that is set out in the MLO may, in the case of a body corporate, be punished by a fine, and, in the case of an individual, by up to two years imprisonment, a fine or both.

Civil sanctions

607. Pursuant to Article 24(1) of the SBL, on the application of the JFSC, the Royal Court may issue an injunction restraining a relevant person from committing a contravention of:

- Article 10 of the SBL (unauthorized business);
- any condition placed on registration;
- any direction given; or
- the MLO.

608. Article 24(2) of the SBL also allows the Court to make an order for steps to be taken to remedy a contravention. Again, at the application of the JFSC, the Royal Court may make an order under Article 25 of the SBL making a relevant person subject to such supervision, restraint or conditions as the Court may specify if it considers that a relevant person is not fit and proper (where it is required to be so) or where it is likely that a relevant person will commit a contravention under Article 24(1).

Administrative sanctions

609. The applicable administrative sanctions available under the SBL were outlined in the analysis of Recommendation 29 and include the powers to:

- refuse to issue or to revoke a license;
- apply conditions to a license;
- issue directions; or
- make public statements.

610. While the range of sanctions appears to the assessors to be largely effective, proportionate, and dissuasive, the assessors note that the JFSC does not have the power to apply monetary fines. While recognizing ensuring an even-handed approach and providing for appropriate appeal mechanisms in the application of a fining system may present particular challenges in a small jurisdiction, the assessors nonetheless recommend that the authorities give serious consideration to the introduction of such a system in order to further enhance the effectiveness of the existing measures and provide for a full range of available sanctioning powers.

611. The following statistics provided by the JFSC (which include both financial and nonfinancial licensed entities-and trust and company service providers in particular) indicate the extent of the enforcement activities of the JFSC.

Cases with AML/CFT issues

	TOTAL NO. OF CASES WORKED ON DURING YEAR	Enforcement cases with AML issues	Enforcement cases with CFT issues	Enforcement cases with Money Laundering Order issues/ breaches	Supervision cases with AML issues
2006	140	42	2	4	52
2007	201	42	1	2	72
2008	136	46		2	26
Totals	477	130	3	8	150

Enforcement actions taken by the JFSC where AML/CFT issues were involved

	Words of advice	Notice(s)	Direction(s)	Public Statement (majority relate to unauthorized business with ML issues)	Referral to the JFCU / Attorney General	Regulatory action (includes heightened supervision and remedial action plans)
2006	5	27	7	13	8	62
2007	2	23	5	12	3	76
2008	1	16	2	8	8	29
TOTAL	8	66	14	33	19	167

Designation of Authority to Impose Sanctions (c. 17.2):

612. In the case of criminal sanctions, action may be taken by the Royal Court at the instigation of the Attorney General. In the case of civil or administrative sanctions, or a breach of the regulatory laws, action may be taken by the JFSC.

Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):

613. Where an offense under the MLO by a financial institution or other relevant person that is a body corporate is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary, or other similar officer of the body corporate purporting to act in any such capacity, he or she, as well as the body corporate shall be guilty of that offense and shall be liable to be proceeded against and punished accordingly.

614. Where an offense is committed under the SBL, Article 42(1) provides that, where an offense committed by a person is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is, or was, a principal person in relation to that person, that principal person shall be guilty of the offense and liable in the same manner to the penalty provided for that offense. As noted earlier, the term “principal person” is defined in Article 1(1) of the SBL and includes any director and any person who directly or indirectly holds 10 percent

or more of the share capital issued by a relevant person. Likewise, Article 42(2) of the SBL provides that, where an offense committed by a company is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer, the person shall also be guilty of the offense and liable in the same manner as the company to the penalty provided for that offense. In addition, any person who aids, abets, counsels or procures the commission of an offense under the SBL will also be guilty of the offense and liable in the same manner as a principal offender to the penalty provided for that offense. Similar provisions appear in the regulatory laws, e.g. Article 41(3), (4), and (6) of the FSJL.

Range of Sanctions—Scope and Proportionality (c. 17.4):

615. There is a range of sanctions available which can be applied in a manner proportionate to the severity of a situation. The authorities point out that the range of available powers includes the power to impose fines (albeit exercisable by the Royal Court at the instigation of the Attorney General)—the JFSC does not have the power to apply administrative fines. The JFSC has power to withdraw, restrict, and potentially suspend (through direction) a financial institution's or other relevant person's registration.

616. All of the following sanctions are available:

- Written warnings (a general power that can be applied to all relevant persons).
- Directions to comply with specific instructions and to bar individuals from employment (Article 23 of the SBL)—applicable to all relevant persons.
- Requesting regular reports from a relevant person on the measures that it is taking, e.g., in order to address a matter highlighted through an on-site examination (a general power that is available in respect of all relevant persons).
- Fines for noncompliance (though only in the form of criminal sanction)—all relevant persons.
- Restricting the powers of managers, directors or controlling owners (through conditions under Article 17(3) of the SBL, a direction under Article 23 of the SBL, or intervention of the Royal Court under Articles 24 and 25 of the SBL)—all relevant persons.
- Objecting to the continued appointment of principal and key persons—financial institutions that are subject to the regulatory laws.
- Appointment of a manager—financial institutions that are subject to the regulatory laws.
- Revocation of registration—under Article 18 of the SBL (and equivalent provisions in the regulatory laws).

Supervisory resources – applying R.30

Adequacy of Resources for Competent Authorities (c. 30.1):

617. The JFSC is a statutory body corporate set up under the JFSC Law, under which it is accountable for its overall performance to the States through the Minister for Economic

Development. The JFSC's key purpose is to maintain Jersey's position as an international finance centre with high regulatory standards by: reducing risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers; protecting and enhancing the Island's reputation and integrity in commercial and financial matters; safeguarding the Island's best economic interests; and countering financial crime both in Jersey and elsewhere. The assessors note that the JFSC has been given an explicit statutory role in relation to countering financial crime and, appropriately, the role is not confined to crime that may be committed in Jersey.

618. With regard to the structure of the JFSC, the JFSC Law provides for a Board of Commissioners to be its governing body. This Board currently comprises of ten Commissioners (including a Chairman) drawn from Jersey, the U.K., and the Netherlands. A Director General, Deputy Director General, ten directors, and JFSC Secretary make up the JFSC's executive board, which is responsible for the day-to-day operations. Article 2(4) of the JFSC Law provides that the JFSC shall be independent of the Minister for Economic Development and of the States, except in certain specific circumstances set out in the law.

619. The JFSC is funded through fees and charges levied on the financial sector in line with Article 21 of the SBL and Articles 14 and 15 of the JFSC Law (in respect of functions under the regulatory laws). Under the regulatory laws, each sector has its own fee structure that determines the level of fees to be paid by any single entity. Details of the charging methodologies are published on the JFSC's website. In order to set fees, the JFSC must first consult with, and have the agreement of, industry. Article 21(2) of the SBL and Article 15(2) of the JFSC Law provide that fees are to be set at such a level as is necessary to: raise sufficient income to allow the JFSC to carry out its functions; and provide a reserve of such amount as is considered to be necessary. For the past three years the JFSC has recorded a surplus of income over expenditure. The assessors were satisfied that the JFSC has access to sufficient resources to carry out its AML/CFT functions.

620. At the time of the assessment, the JFSC had a permitted headcount of 118. As at end December 2008, the JFSC employed 95 full time staff and 11 part time staff. This includes an AML Unit—formed in 2007—which consists of four staff and which is headed by a deputy director. The assessors were impressed with the level and quality of the staff resources, in the specialist policy area, in the AML Unit, and across each of the supervisory divisions that the JFSC was devoting to conducting its AML/CFT functions. From meetings with financial sector participants, the industry respects the professionalism and technical knowledge of the JFSC's management and staff.

621. The JFSC has been a member of the OGBS since its creation in 1980, and has played a leading role in the OGBS's anti-money laundering program; particularly through OGBS Chairman Colin Powell, who is also Chairman of the JFSC. Through its membership of the OGBS, the JFSC has worked with the FATF and the Basel Committee. As part of the OGBS, the JFSC has also participated in the development by the OGBS of a statement of best practice for trust and company service providers. The JFSC also attends and contributes to the work of the Wolfsberg Group. An officer of the JFSC sits on the board of the European Business Register, which is responsible for maintaining access to the data of 20 million companies held in the Registries of 19 European jurisdictions (including Jersey). The expertise of the JFSC is further evidenced by its staff being asked to participate in numerous international assessment exercises and to provide training to foreign regulators and other bodies.

Integrity of Competent Authorities (c. 30.2):

622. The JFSC's recruitment policy is published on its Intranet and accessible to all staff as part of the JFSC's staff handbook. The policy is intended to limit recruitment to those individuals of high integrity and holding appropriate skills. To this end, the JFSC conducts a series of pre-employment checks, including Police checks, obtaining references, and health screening. It requests that all officers at manager level and above hold a professional qualification or are working towards one and requests copies of original certificates to evidence that the qualification is held when a new employee joins the JFSC. All staff, on commencement of employment, are required to sign a declaration concerning confidentiality and conflicts of interest (in line with section 4.01 of the staff handbook), and this declaration is reviewed annually as part of each member of staff's performance review process.

Training for Competent Authorities (c. 30.3):

623. The JFSC has been providing AML/CFT training to its staff and has plans to develop the program more formally. In September 2007, all relevant staff were provided with internal training on the introduction of the Handbook for Regulated Businesses, and this was followed up in May 2008 by internal training on how the JFSC will assess compliance by relevant persons with the corporate governance section of the Handbook for Regulated Businesses. In addition, internal training was provided on a range of topics, including the relevance of FT for Jersey, the identification of suspicious transactions and filing of SARs, and measures to counter ML. Given the recent changes in Jersey's requirements for preventive measures, the assessors encourage the JFSC to expedite its plans for updated AML/CFT training.

Statistics – applying R.32

32.1

624. Since the 1980s, the Jersey authorities have been working to develop their AML/CFT systems to comply with the expanding international standards, and have also assisted in the development of those standards. Amendments of the FATF Recommendations (and of other source material including relevant EU Directives), together with previous international assessments which Jersey has undergone, have resulted in frequent reviews by the Jersey authorities of the adequacy of their AML/CFT requirements. The assessors found that the Jersey authorities were committed to keeping up-to-date their implementation of the FATF Recommendations and were exceptionally well informed regarding latest developments and interpretations.

625. In terms of coordination, the Chief Minister's Department is responsible for the ongoing formulation of the AML/CFT strategy and the development and operation of an effective AML/CFT framework. Support and coordination is provided by an Anti-Money Laundering / Terrorist Financing Strategy Group (AML/CFT Strategy Group), which provides a forum to discuss and develop coordinated strategies and policies.

32.2

626. The JFSC maintains appropriate AML/CFT statistics covering its significant level of interaction with the JFCU, relevant on-site examinations, and cooperation with supervisory authorities abroad. The assessors were provided with statistics for the numbers of SARs referred, through appropriate legal gateways, by the JFCU to the JFSC for attention and assistance and the numbers of SARs filed by the JFSC with the JFCU.

627. The JFSC maintains up-to-date statistics on supervision visits to financial institutions and TCBs subject to its supervision, which considered ML, wholly or in part, as follows:

	2004	2005	2006	2007	2008
JFSC on-site visits that considered AML/CFT, in whole or in part	55	126	113	155	197

628. The assessors had the opportunity to conduct a high-level review of some of the on-site work conducted by the JFSC and discuss with the supervisors some of the types of issues arising. The assessors formed the view that the inspection work was conducted professionally, outstanding issues pursued, and the records well maintained.

3.10.2. Recommendations and Comments

R.17

- The authorities should consider expanding the range of sanctioning powers available to the JFSC to include monetary fines.

R.30

- None for supervisors

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
R.17	LC	<ul style="list-style-type: none"> • The supervisory authority does not have the power to apply monetary fines among the range of available sanctions.
R.23	C	
R.25	C	
R.29	C	

3.11. Money or Value Transfer Services (SR.VI)

3.11.1. Description and Analysis (summary)

Legal Framework:

629. Based on Schedule 2 of the POCL and Article 2 of the FSJL, a person carrying on the following services is a money service business subject to the POCL and the MLO:

- a bureau de change;
- providing check cashing services;
- transmitting or receiving funds by wire or other electronic means; or
- engaging in money transmission services.

630. Unless exempted, persons carrying on money service businesses must seek registration with the JFSC. Exemptions for bureaux de change are based (primarily) on turnover in the previous 12-month period. The turnover threshold for exemption is set at under GBP300,000. The exemption threshold is designed to accommodate hotels and hospitality business that provide a small bureau de change facility for the convenience of their customers. Persons claiming the exemption must notify the JFSC.

Designation of Registration or Licensing Authority (c. VI.1):

631. A regulatory framework for money service businesses came into effect in July 2007 with the coming into force of the Financial Services (Amendment of Law) (Jersey) Regulations 2007, Financial Services (Money Service Business (Registration)) (Jersey) Order 2007 and the Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007 and the simultaneous issuance of Codes of Practice for Money Service Business by the JFSC. This was in addition to the obligation to follow the requirements of the MLO, that have applied since 1999. Under the SBL 2008, the JFSC is the supervisor of the money service businesses sector and AML/CFT compliance is the primary focus of JFSC supervision of the sector. Names and addresses of registered money service businesses are posted on the JFSC website.

Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):

632. MSBs are subject to the full scope of preventive measures requirements contained in the POCL and the MLO. In addition, the Codes of Practice requires money service businesses to have adequate risk management systems that address: (a) corporate governance; (b) internal control systems (to include 10 year record retention); (c) Compliance Officer (in addition to the Money Laundering Reporting Officer that is required under the MLO; (d) complaints procedures; and (e) integrity and competence. The Codes of Practice outline the main components of an adequate risk management system. For detailed rules and guidance on CDD or SAR reporting, the Codes of Practice state that MSBs must comply with the relevant Handbook for Regulated Businesses. Since

MSBs are regulated by the JFSC under the FJSL, the relevant Handbook is the Handbook for Regulated Businesses. Subsequent to introduction of the Codes of Practice, the JFSC conducted an outreach campaign and training seminars to explain to the sector its AML/CFT obligations with respect to CDD, record keeping, internal controls, training, and SAR reporting.

Monitoring of Value Transfer Service Operators (c. VI.3):

633. The JFSC has developed internal procedures to supervise money service businesses and, since July 2007, has conducted supervisory visits to all registered independent money service businesses. In addition, it has conducted outreach programs with the sector to confirm that all parties requiring registration are aware of the requirement or the need to notify an exemption. This work has identified an incomplete understanding of AML/CFT risks among operating staff and routine problems in adapting to new systems, policies, procedures, and controls but no serious compliance issues have arisen. In discussions with the assessors, MSB contacts were generally familiar with ML and FT vulnerabilities and demonstrated awareness of their AML/CFT obligations. Administrative arrangements were in place and contacts confirmed recent JFSC supervision visits which included reviews of policies and procedures, examination of systems, and review of transactions logs.

List of Agents (c. VI.4):

634. Section 3.4.1.3 of the Codes of Practice requires that MSBs maintain a list containing the names of any agents it appoints to carry on money service business on its behalf and the addresses of premises from which such agents operate, and to notify the JFSC promptly in writing of any changes made to that list.

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

635. See Sections 3 above for an analysis of Jersey's sanctions regime for enforcing compliance with AML/CFT preventive measures, including for DNFBPs

Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):

636. It is not believed that any alternative remittance systems currently operate within the jurisdiction. Intelligence indicates that migrant workers in Jersey (the vast majority of which are EU nationals) appear to remit funds home through either the mainstream banking system, or through registered and supervised money service businesses which are regulated for compliance with SR VII.

Summary

637. Jersey has adopted a comprehensive AML/CFT regime for the money service business sector that addresses most of the criteria of SR.VI. Issues outstanding relate primarily to incomplete implementation of a new regime. AML/CFT regulatory requirements for MSBs had been in place for about 18 months as of the time of the assessment. Service providers have put in place systems and procedures, but MSB staff are not yet fully familiar with AML/CFT vulnerabilities or with their responsibilities, suggesting a need for further experience and training for fully effective implementation.

3.11.2. Recommendations and Comments

- The JFSC should sustain its training and onsite supervision to improve compliance for MSBs

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	LC	<ul style="list-style-type: none"> • Additional training and experience needed for full effective implementation.

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1. Customer Due Diligence and Record-keeping (R.12)

4.1.1. Description and Analysis

Legal Framework:

638. CDD obligations for DNFBPs are laid out in the POCL and the MLO and are substantially the same as those for financial institutions and are subject to the same strengths and weaknesses identified in sections 3.1 and 3.3 of this report. Trust company businesses have been supervised by the JFSC for AML/CFT compliance since 2001. Arrangements for the JFSC to supervise compliance by lawyers, accountants, estate agents and high value dealers only came into force in September 2008. A Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism has been issued for the Legal Sector (Handbook for Lawyers), the Accountancy Sector (Handbook for Accountants), and the Estate Agents and High-Value Dealers Handbook for Estate Agents and Dealers in High-Value Goods. The Handbook for Regulated Businesses applies to the TCB sector (as well as to the money service business sector). The Handbooks include both mandatory regulatory requirements as well as guidance. Much of the business conducted by Jersey DNFBPs, particularly the lawyers, accountants, and TCBs, is characterized by cross border and non face-to-face relationships. Managing the potential risks of such relationships and dealing with the attendant challenges of identification of ultimate beneficiaries and controllers are critical elements in implementation of the CDD regime for Jersey DNFBPs.

Trust and Company Service Providers

639. Under the FSJL the trust company business is defined as a “financial service business” and is regulated under that law. Article 2(3) of the FSJL specifies that the trust company business encompasses any person that carries on a business that involves the provision of company administration services, or trustee or fiduciary services and also carries on an activity that is specified in detail in Article 2(4), which tracks, item for item, the activities listed in Recommendation 12. The Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 (and subsequent exemption orders) exempts some persons involved in trust company business from the requirement to be registered by the JFSC. The exemptions are narrow and specific and generally address cases where the trust company activity is incidental to the person’s principal business activity.

640. Pursuant to Schedule 2 of the POCL, a person that carries on trust company business will also be carrying on a financial services business, and hence subject to additional reporting obligations in the POCL, DTOL, and TL as well as to the MLO which is made under the POCL. The recently implemented SBL (Article 5) specifies that the JFSC will be the AML/CFT supervisory body for all business that is prudentially supervised by the JFSC, which includes TCBs. Under Article 23 of the SBL, which gives the JFSC power to issue relevant Codes of Practice, TCBs are also subject to the regulatory requirements set in the Handbook for Regulated Businesses.

641. The CDD regime as spelled out in the POCL, the MLO, and the Handbook for Regulated Businesses is identical for all regulated financial services businesses subject to the SBL. The strengths

and weakness of that CDD regime are analyzed in detail in section 3 above and, for purposes of compliance with Recommendation 5, the observations there apply equally to the case of TCBs.

Lawyers

642. Pursuant to Schedule 2, lawyers are subject to the requirements of the MLO through the POCL. Schedule 2 does not differentiate between the various categories of legal professionals but applies to all members of the “independent legal profession,” i.e., including “those who by way of business provide legal or notarial service to third parties when participating in financial, or immovable property, transactions” relating to (1) the buying and selling of immovable property or business entities; (2) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property; (3) the managing of client money, securities or other assets; (4) the opening or management of bank, savings or securities accounts; (5) the organization of contributions necessary for the creation, operation or management of companies; or (6) the creation, operation or management of trusts and companies or similar structures.

643. Under the SBL (and SBO), which came into force in September 2008, the JFSC is the designated authority for supervising and enforcing lawyer’s compliance with their AML/CFT obligations. Under its powers in the SBL, in October 2008 the JFSC issued the Handbook for Lawyers. The Handbook for Lawyers introduces regulatory requirements detailing policies and procedures and systems that the legal sector is required to follow to meet the statutory requirements of the POCL and MLO. The content and structure of the Handbook for Lawyers follow those of the Handbook for Regulated Businesses, but with more attention to the particular circumstances of the legal sector.

Accountants

644. Accountants are subject to the POCL, as provided in Schedule 2. Accountants covered by Schedule 2 are those providing: (a) external accountancy services; (b) advice about the tax affairs of another person; (c) audit services; or (d) insolvency services. The Schedule provides more specific definitions of these services. There are no accounting standard setters organized in Jersey. Most accountants are affiliated with chartering organizations in the U.K., Ireland, Canada, or various other countries. While accountants are subject to the membership rules that are set by their home chartering organization, until very recently the provision of accountancy services was not otherwise regulated in Jersey.

645. Under the SBL, which came into force in September 2008, accountants are subject to regulation by the JFSC for compliance with their AML/CFT obligations. Under authority of the SBL (and SBO), the JFSC has issued a Handbook for Accountants. In addition to general guidance, the Handbook for Accountants introduces regulatory requirements detailing policies and procedures and systems that the accountancy sector is required to follow to meet the statutory requirements of the POCL and MLO. The content and structure of the Handbook for Accountants follow those of the other Handbook for Regulated Businesses but with more attention to the particular circumstances of the accountancy sector.

Real Estate Agents

646. Estate agency services are subject to the POCL, coming under the “Other Businesses” part of Schedule 2. Real estate business is defined as “the business of providing estate agency services for or on behalf of third parties concerning the buying and selling of freehold (including flying freehold or leasehold property (including commercial and agricultural property) whether the property is situated in Jersey or overseas.” Until recently estate agency services were not regulated, neither for AML/CFT purposes, nor for other public interest purposes.

647. With effect from February 2008 the financial sector requirements for measures to prevent ML and FT were extended to real estate agents. Under the SBL, which came into force in September 2008, the JFSC has been designated as the AML/CFT supervisor for estate agents. As a result estate agents are now required to be registered by the JFSC. Also, in August 2008 the JFSC issued the Handbook for Estate Agents and Dealers in High-Value Goods. The regulatory requirements introduced in the Handbook for Estate Agents and Dealers in High-Value Goods cover some of the same items as those in the Handbook for Regulated Businesses, although they are presented in a more streamlined style.

Dealers in Precious Metals and in Precious Stones

648. For high value transactions the Jersey AML/CFT regime is not limited to dealers in precious metals and precious stones but includes all high value dealers. Schedule 2 of POCL brings high value dealers within the scope of the AML/CFT regime. Further analysis of such additional high value dealers can be found in the discussion of R.20 below.

649. With the coming into effect of the SBL (and SBO), the JFSC has become the designated supervisor for high value dealers’ compliance with their obligations under the POCL and the MLO. As with other DNFBP sectors the JFSC has issued a Handbook for Estate Agents and Dealers in High-Value Goods, introducing Codes of Practice and guidance for high value dealers. A requirement of the SBL is that a party that wishes to be a “high value dealer” and accept cash payments of EUR15,000 or more must apply for registration with the JFSC. Once registered, they must apply the full customer due diligence regime akin to that required of the accounting sector. Dealers who had been accepting high value payments but do not wish to register are expected to adopt internal policies stating that they will not accept cash for transactions in amounts of EUR15,000 or more. Further, these policies should be in writing, publicized to staff, and available for inspection by the JFSC.

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1):

TCBs

650. While TCBs are prudentially supervised under Jersey law, they are not financial institutions under FATF definitions. Under FATF definitions, TCBs are DNFBPs. The MLO and the Handbooks take this distinction into account in the way they handle simplified or reduced or simplified CDD measures. (Interpretive Note to Recommendation 5.) Under Article 17 of the MLO, relevant firms may not need to identify the underlying customers of intermediaries in certain circumstances. However, Article 17 limits this concession to customers that are banks, collective investment funds, investment businesses, fund services businesses, and insurance businesses (i.e., to financial

institutions – but excluding persons carrying on money service business). Customers that are TCBs (and other DNFPBs) do not benefit from the concession that is given in Article 17 to customers that are FIs, though Article 16 may be relevant in such circumstances. (See section 3 above for a full discussion of Jersey’s treatment of CDD for intermediaries and introducers.)

Implementation by TCBs.

651. In evaluating the effectiveness of implementation of the CDD regime for the TCB sector the assessors benefited from discussions with the JFSC, including access to internal JFSC reports, discussion of aggregate findings from examination reports, and reports to industry posted on the JFSC website. In addition, the assessors met with industry representatives and individually with seven TCBs.

652. The TCB sector has undergone a significant consolidation and evolution since regulation, including stricter compliance standards, was introduced in 2000. Compliance with AML/CFT standards is an important part of Jersey’s prudential regulatory framework for TCBs. All trust service businesses were required to register with JFSC by February 2001. Transitional arrangements were put in place to allow TCBs to adapt their work practices to the new regulatory requirements. On June 20, 2008 the JFSC issued a letter to CEOs of TCBs advising that the transitional phase had ended.

653. The letter to CEOs notes that during the transition period, “24 of the original trust company business applicants who had applied by February 2, 2001, have either merged with another company, ceased trust company business or withdrawn their applications, prior to a determination of that application. A further four firms have had their applications formally refused. Additionally, during this transitional period, six firms who had been granted registration were unable to maintain the required regulatory standards and, through working closely with the JFSC, voluntarily sought to wind down their affairs by a sale of the underlying customer base or affiliation.”

654. The CEO letter goes on to identify a variety of regulatory shortfalls the JFSC had identified during the transition period. These include both regulatory breaches and failures to comply with the Codes of Practice for Trust Company Business—issued under the FSJL. Many of the shortfalls related to weakness of corporate governance and inadequate internal controls. More specific CDD shortfalls included failure to identify PEPs, inadequate due diligence and inappropriate risk ratings for clients operating from high-risk jurisdictions, insufficient due diligence on underlying attorneys and their activities, and inadequate documentation to demonstrate a full understanding of the underlying company activities (including in a case of a trading company receiving commission on arms sales).

655. Internal JFSC reports support the summary presented in the CEO letter. A review of TCB compliance with anti-money laundering requirements was undertaken in 2007, based on themed visits to 16 trust companies. Customer take-up procedures at 12 of the 16 companies did not indicate significant due diligence deficiencies. For the remaining four trust companies significant due diligence deficiencies were found either in relation to the timing of customer payments versus the completion of due diligence, or in the failure of due diligence measures to detect alleged tax evasion. In general, due diligence material was well documented. Monitoring of prospective transactions was generally difficult for trust companies, in part due to the absence of industry software. Retrospective due diligence for pre-1999 customers had been largely completed, although in some cases where no transactions had occurred, due diligence was not completed or was partially complete. Inconsistent due diligence records are a risk for trust firms acquiring other trust firms or undergoing restructuring.

656. Visits to trust companies confirmed that practitioners are highly alert to their AML/CFT obligations and have grown increasingly comfortable with managing their compliance responsibilities. There was substantial agreement that Handbook for Regulated Businesses (issued in February 2008) was a considerable advance, particularly as it had introduced greater clarity with respect to treatment of risk. Firms noted that there had been considerable consultation on the Handbook for Regulated Businesses over the previous three years and that systems and procedures for meeting the new standards had been being put into place in anticipation of the Handbook for Regulated Businesses coming into effect.

657. All firms visited had extensive business with offshore clients, including a significant number of PEPs and clients operating out of high risk jurisdictions. Products offered ranged across the full spectrum of trust, company, and fiduciary businesses, from plain vanilla asset-holding trusts to highly complex wealth management schemes, to sophisticated company structures, to corporate benefit plans. Introducers and intermediaries are a very important channel for business development for Jersey trust companies. All firms interviewed stated that, while introducers and intermediaries may be called upon to collect due diligence documentation, in almost all cases the trust company would carry out its own due diligence and would not rely on the due diligence of offshore intermediaries or introducers. Firms were sensitive to the need to carry out adequate risk assessments. Even so, it was clear that similar circumstances were frequently given different risk ratings by different TCBs.

Lawyers

658. An exemption is provided for in Article 6 of the Money Laundering (Amendment) (Jersey) Order 2008, which allows for independent legal professionals to enter into a business relationship or carry out a one-off transaction even without verifying the identity of the customer and any beneficial owners and controllers if the relationship or transaction relates to a registered contract within the meaning of the Housing (Jersey) Law 1949. As noted in the introduction, residential real estate is tightly controlled in Jersey and all residential real estate transactions, both rental and purchase/sale require housing consent and must be recorded and registered by the Royal Court. Completion of the process requires scrutiny of an individual's identity, employment and residency.

659. It is worth highlighting that the exemption only applies to the verification requirement but does not extend to the identification procedure. The authorities stated that the concession was granted based on the fact that such transactions are a matter of public record and subject to considerable government scrutiny and thus represent low risks in terms of AML/CFT. Like TCBs, lawyers that are customers (and acting in an intermediary capacity) cannot benefit from the concession that is provided for in Article 17 of the MLO that permits relevant persons to adopt reduced or simplified CDD measures with respect to certain intermediaries. However, the Handbook for Lawyers provides that in cases where the law firm is acquiring another business or a block of clients, the firm may rely on the information and evidence of identity previously obtained by the vendor, provided:

- The vendor is a financial services business that is a regulated person or carries on an equivalent business to any category of regulated business as defined by Article 5 of the MLO; and
- The firm has assessed that the vendor's CDD measures are satisfactory.

660. In addition, the regulatory requirements and guidance in Section 4 of the Handbook for Lawyers identify specific cases where lawyers are allowed to adopt reduced or simplified CDD measures. The specific cases where concessions for reduced or simplified CDD are authorized are:

- Cases where funds may only be received from and paid to an account in the customer's name, i.e., a product or service where funds may not be paid in by, or paid out to, third parties.
- Cases where an instruction to a law firm to perform a single task within a limited timeframe (such as drafting a single deed of appointment) does not have "an element of duration," although it would of course constitute a transaction.

661. In cases where assets do not underlie a one-off transaction, the value of the transaction may be taken as the amount of the fees charged to the client by the law firm. In accordance with Article 4 of the MLO, where those fees are known at the outset to be less than EUR15,000, identification is not required.

- With respect to CDD for existing relationships (defined as relationships established before February 19, 2008), Article 13 and 24A of the MLO provide that CDD measures must be applied at appropriate times on or after May 1, 2008. For higher risk customers, identification measures are to be applied as soon as practicable after the risk has been assessed as higher. For standard and lower risk clients, however, the Handbook for Lawyers defines an appropriate time to apply identification measures as:
 - When a transaction of significance takes place;
 - Where there has been a gap in retainers of three years or more; and
 - When the firm's client documentation standards change substantially.
- Also, when conducting or updating CDD measures on existing relationships, or a subsidiary of an existing customer, a firm may demonstrate that it has taken reasonable measures to apply identification measures when other information already held on file for an existing client provides satisfactory evidence that the customer is who they claim to be. Publicly available information may also confirm the information held by the firm. Alternatively, it may be appropriate for a fee earner or partner who has known the client for a long time to place a certificate on the file providing an assurance as to identity. In such cases, it may not be necessary to collect additional identification information.

662. In addition, under Article 16 of the MLO, where an intermediary (or introducer) is subject to the MLO or is situated in an equivalent jurisdiction and is subject to equivalent AML/CFT measures, and is supervised for compliance with those measures, a firm may be able to rely upon a third party to carry out elements of identification measures required under Article 13 and 3.

663. Each of these concessions for lawyers to adopt reduced or simplified CDD involves circumstances contemplated in the MLO. The concessions are, for the most part, narrowly specified and tightly linked to an assessment of standard or lower risk. The Handbook for Lawyers requires that the circumstances justifying reduced or simplified measures must be documented and that the concession may not be used if there is a suspicion of money laundering. As drafted, the concessions available for lawyers to adopt reduced or simplified CDD appear broadly consistent with the language

of Recommendation 5. However, in the Jersey environment, it is not clear whether some of the concessions are workable or necessary:

- Many of the relationships of lawyers will be with either non face-to-face clients (including from offshore jurisdictions) where a presumption of higher risk may be appropriate. Fewer clients are likely to fall within the threshold of standard or lower risk.
- Even where no payment is made to third parties, it is unclear why lawyers would be handling in-and-out fund movements for a client or why such fund movements would be likely to fall in the low or standard risk category. The authorities indicated that this text was included in error in the Handbook for Lawyers.
- The provision for lawyers to self-certify existing clients is not consistent with the re-identification standards expected for financial institutions set out in the Handbook for Regulated Businesses.

664. The MLO requires all members of the legal profession (regardless of the law under which they are licensed to provide legal advice) to comply with AML/CFT CDD requirements in all circumstances set out by the FATF Recommendation 12.

Implementation by Lawyers

665. Overall, practitioners seemed to be well informed about their obligations with respect to CDD and record keeping requirements under the MLO. The final version of the Handbook for Lawyers was published in late October 2008 at the time the assessment visit was underway. Nevertheless, based on extensive prior consultation with the JFSC, lawyers were generally familiar with the expected scope and content of the Handbook for Lawyers. The JFSC has developed and begun to implement supervisory practices for overseeing AML/CFT compliance by lawyers. All legal professionals the assessors met with stated that the beneficial owner would be identified in all cases. While they would open a client file, no transaction on behalf of the client would be carried out in the absence of complete customer due diligence information.

666. In cases where business is introduced by third parties, which is the vast majority, all of the lawyers the assessors met with stated that they would conduct their own CDD. They would not rely on customer information provided by a foreign counterpart.

667. Since the regulatory framework for lawyers has just recently come into force, compliance reviews by the JFSC had just commenced. For the same reason, the assessors were not in a position to evaluate fully the effectiveness of implementation by lawyers of their CDD arrangements.

Accountants

668. The CDD regime for accountants as set out in the MLO, and the Handbook for Accountants is the same as for other relevant persons. The strengths and weakness of that CDD regime are analyzed in detail in section 3 of this report and, for purposes of compliance with Recommendation 5, the observations there apply equally to the case of accountants.

669. Like other relevant persons, accountants may use the concession that is provided for in Article 17 of the MLO that provides under certain circumstances for identification measures to be

reduced or simplified for certain customers that are intermediaries. In addition, similar to the concession allowed to lawyers, the Guidance in Section 4 of the Handbook for Accountants provides for reduced or simplified CDD measures to be carried out for lower or standard risk existing clients. In such cases, the Guidance states that “a firm may demonstrate that it has taken reasonable measures to apply identification procedures when other information already held on file for an existing client provides satisfactory evidence that the client is who they claim to be. Publicly available information may also confirm the information held by the firm. Alternatively, it may be appropriate for a fee earner or partner who has known the client for a long time to place a certificate on the file providing an assurance as to identity. In such cases, it may not be necessary to collect additional identification information”.

670. As noted in the section above on lawyers, the concession allowing accountants to self-certify the identity of existing clients is inconsistent with the standards set out in the Handbook for Regulated Businesses.

Implementation by accountants

671. While accountants have been subject to the MLO since February 2008, at the time of the on-site visit, a regulatory framework for CDD compliance has only been introduced very recently (September 2008). The JFSC had begun developing supervisory procedures and was conducting official visits to accountancy firms. The assessors were not in a position to evaluate fully the implementation of CDD compliance by the accountancy sector.

672. The assessors met with representatives of the accountancy sector in three meetings. All counterparts were thoroughly familiar with their obligations under the POCL and MLO and other AML/CFT legislation and had a detailed knowledge of the requirements of the Handbook for Accountants. Most of the accountants contacted had previous experience with implementing international CDD standards either because they worked in a multi-national practice or because of involvement in auditing of regulated financial services businesses.

Real Estate Agents

673. Like other relevant persons, estate agents may apply the concession that is provided for in Article 17 of the MLO that allows reduced or simplified identification measures to be applied to certain customers that are intermediaries. Article 18 of the MLO also allows for some exceptions, in very specific circumstances, from the requirement for CDD measures. Given the relatively straightforward activities carried on by estate agents, the Handbook for Estate Agents and Dealers in High-Value Goods gives less latitude for such exceptions than does the Handbook for Regulated Businesses. While all exemptions in Article 18 of the MLO are available, in practice the exemptions for estate agents and high value dealers are relevant where the applicant is: (a) another financial services business that is supervised by the JFSC; (b) a financial services business from an equivalent jurisdiction; or (c) a Jersey public authority.

674. It is unclear whether estate agents are or are not required to identify both the buyers and the sellers of a property. Information provided during the mission was contradictory. The JFSC stated that identification of both buyers and sellers is required and that this has been explained to the industry in outreach meetings. An estate agent visited by the mission confirmed this understanding. In explanation, the JFSC pointed out that in Jersey the estate agent customarily represented both the

seller and the buyer in a transaction and, hence, both became its client. Notwithstanding this, guidance in Section 1.4.1 of the Guidance Section of the Handbook for Estate Agents and Dealers in High-Value Goods says: “Whilst estate agents are required only to undertake CDD on sellers when acting as their agents, best practice would be to at least identify the purchaser, in addition to the seller, once an offer has been accepted.” Recent Risk-Based Approach Guidance for Estate Agents issued by the FATF approaches this issue slightly differently. Footnote 4 of the FATF Guidance states: “In transactions where either the vendor or purchaser is not a client/customer of a real estate agent, the agent acting in the transaction should apply reasonable risk-based CDD measures to the party that is not their client.”

675. With these qualifications the CDD requirements for estate agents and high value dealers are the same as the regime applicable to the financial institutions. The strengths and weaknesses of that regime presented in section 3 of this report are equally applicable to the regime for real estate agents and high value dealers.

Implementation by Real Estate Agents

676. While the CDD requirements for real estate agents have only recently come into force the JFSC has engaged in extensive outreach to the sector to explain the new requirements and help firms prepare. Through contacts with industry, the JFSC has identified a need to assist those with little prior experience with regulation, in particular some who are struggling with the need to carry out risk assessments and to establish formal systems and procedures and controls to implement the CDD program.

Dealers in Precious Metals and in Precious Stones

677. As noted, Jersey opted for a broader definition of high-value dealers, including dealers in precious metals and in precious stones. Over the course of 2008, the JFSC has engaged in extensive outreach to the retail sector explaining the forthcoming requirements. While some dealers in high priced goods initially indicated they might wish to register, with publication of the Handbook for Estate Agents and Dealers in High-Value Goods, those dealers have indicated that, rather than register, they would cease accepting high value cash payments. The transitional application period for registration was open until December 11, 2008, and, to date, no parties have applied for registration as high value dealers (or have since applied).

Implementation for Dealers in Precious Metals and in Precious Stones

678. The compliance regime for high value dealers is still quite new and implementation has not yet been systematically evaluated by the authorities. However, announcement of the introduction of the formal regulatory requirements appears to have prompted a number of high value dealers to cease accepting payment in cash.

CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R. 6 & 8-11 to DNFBP) (c.12.2):

Applying R.6 PEPs

679. The CDD regime with respect to PEPs for all DNFBPs is the same as that for all financial institutions. The strengths and weakness of that regime are analyzed in section 3 above and that analysis applies equally to DNFBPs.

680. As noted above, trust companies in Jersey have numerous PEPs as clients. While the industry is very alert to AML vulnerabilities in this area, specific CDD deficiencies with respect to PEPs have been noted in JFSC compliance examinations and in recent themed visits. Shortfalls in this area were cited in the June 20, 2008 JFSC letter to CEOs.

681. Lawyers, accountants, estate agents, and high value dealers have only recently become subject to AML/CFT oversight so the effectiveness of their implementation of requirements with respect to PEPs has not yet been tested. Firms in these sectors contacted during the assessment were fully aware of their responsibilities with respect to identification of PEPs.

Applying R.8 Non Face-to-Face Transactions

682. The CDD regime for DNFBPs in handling non face-to-face transactions and new technologies is the same as that for all financial institutions. The strengths and weakness of that regime are analyzed in section 3 above and that analysis applies equally to DNFBPs.

683. Discussions with DNFBP sectors indicated that Jersey firms typically do not conclude business relationship via electronic technologies. Risk mitigation procedures for non face-to-face business include working through, if not relying on, third party introducers, requiring certified documentation of identity, and having traveling officers call on overseas clients.

Applying R. 9 Intermediaries/Introduced Business

684. The requirements imposed on DNFBPs for dealing with intermediaries and introduced business are, with minor exceptions, the same as those applied to all financial institutions. See section 3 above for a discussion of the strengths and weaknesses of that regime.

685. As discussed in Section 3.3 above, under Article 16 of the MLO, financial institutions are allowed to adopt simplified and reduced or simplified CDD for certain customers that are intermediaries. DNFBPs may also apply the concession in Article 17 of the MLO with respect to regulated persons and persons carrying on equivalent business. (Analysis of this situation with respect to TCBs is presented above in the discussion on the Legal Framework for TCBs.)

686. See above for a discussion of implementation by TCBs. Lawyers, accountants, estate agents, and high value dealers have only recently become subject to AML/CFT oversight so the effectiveness of their implementation of requirements with respect to intermediaries and introduced business has not yet been systematically tested although the authorities reported that early indications are positive. Firms in these sectors contacted by the assessors were aware of their requirements with respect to intermediaries and introduced business.

Applying R.10 Recordkeeping

687. The record keeping requirements of DNFBPs are the same as those for all financial institutions. See section 3 of this report for a discussion of the strengths and weaknesses of that regime.

688. As noted in JFSC examination reports and themed visits, as well as the recent letter to CEOs, have called attention to various shortfalls in the quality of record keeping by some TCBs, including incomplete CDD and delayed CDD measures, incomplete or inadequate customer business profiles, and post-dated payment authorizations. Lawyers, accountants, estate agents, and high value dealers have only recently become subject to AML/CFT oversight so the effectiveness of their implementation of record keeping requirements has not yet been systematically tested. Firms in these sectors contacted by the assessors were generally aware of their record-keeping requirements and the view of the authorities is that records are well maintained.

Applying R. 11 Attention to Complex, Unusual Transactions

689. The requirements for DNFBPs to pay attention to all complex and unusual transactions are the same as those for all financial institutions. See section 3 above for a discussion of the strengths and weaknesses of these requirements.

690. As noted in section 4.2 above, JFSC examination reports and themed visits, as well as the recent letter to CEOs, have called attention to cases of inadequate TCB profiling of client business risk and weaknesses in the ability of TCBs to monitor prospective transactions. Lawyers, accountants, estate agents, and high value dealers have only recently become subject to AML/CFT oversight so the effectiveness of their implementation of requirements with respect to complex and unusual transactions has not yet been systematically tested. Firms in these sectors contacted by the assessors were generally aware of their obligations with respect to paying attention to complex and unusual transactions, a position confirmed by the authorities.

691. Overall, Jersey has put in place a comprehensive regime for CDD and recordkeeping by DNFBPs. By design, that regime addresses all of the relevant topics covered in the FATF Recommendations. With minor qualifications, the formal legal framework for CDD and record keeping satisfies the relevant criteria. However, various implementation issues exist, both because the regulatory framework for lawyers, accountants, estate agents, and high value dealers is very new, and because of identified weakness in TCB implementation.

4.1.2. Recommendations and Comments

The authorities should:

- Remove the concession which allows lawyers to apply reduced or simplified CDD measures in cases where funds may only be received and paid to an account in a customer's name.
- Repeal the concession that allows lawyers and accountants to self-certify identification of existing clients.
- Sustain close supervision of TCBs to improve compliance with CDD and record-keeping requirements.

- As lawyers, accountants, real estate agents, and high value dealers, gather experience with the new compliance arrangements, the authorities should continue with its program to evaluate the effectiveness of implementation by these sectors of their CDD requirements.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"> • Compliance weaknesses identified in some TCBs. • Testing of compliance by lawyers, accountants and estate agents only recently commenced. • Application to DNFBPs as appropriate of factors identified in section 3 for financial institutions.

4.2. Suspicious Transaction Reporting (R.16)

4.2.1. Description and Analysis

Legal Framework:

692. The obligation of Jersey DNFBPs to file suspicious activities reports (as well as the Recommendation 15 requirements for internal policies and controls and for screening, training and audit) derive from the POCL, DTOL, TL and the MLO and are, with the exception of cases of lawyer professional privilege (LPP), the same as those applicable to all financial institutions in Jersey. Likewise, with effect from September 2008, all DNFBPs are now subject to regulation by the JFSC for AML/CFT compliance, including compliance with SAR reporting obligations (as well as the Recommendation 15 requirements). Trust companies have been regulated by the JFSC for AML/CFT compliance since 2000, including application of Codes of Practice for Trust Company Business issued under the FSJL and the regulatory requirements set in the Handbook for Regulated Businesses. JFSC regulation of lawyers, accountants, real estate agents, and high value dealers for AML/CFT compliance is much more recent, only being effective with the coming into force of the SBL in September 2008. Using powers under the SBL, the JFSC has issued a Handbook for Accountants, Handbook for Estate Agents and Dealers in High-Value Goods and, most recently, a Handbook for Lawyers. These Handbooks, like the one for regulated businesses, contain regulatory requirements as well as more general guidance.

693. With these recent developments, the statutory and regulatory framework for SAR reporting for DNFBPs are identical to that for financial institutions, with the exception of professional privilege. The strengths and weakness of that regime are analyzed in section 3 of this report and the observations there apply equally to DNFBPs.

Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 & IV.1 to DNFBPs):

694. The statutory requirement for relevant persons, including DNFBPs, to file suspicious activity reports provides that an employee of a relevant person (and relevant person itself) commits an offense if he or she knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in ML or drug money laundering. This requirement is contained in various statutes, including Articles 34D of the POCL; Article 40A of the DTOL; and Articles 23 of the TL. Full details of these requirements are analyzed in section 3.7 above and the observations there apply equally to DNFBPs.

695. All parts of the legal profession are subject to the reporting requirements under the POCL, the DTOL and the TL, as outlined under section 3 of this report. However, Article 34D(5) of the POCL, Article 40A(5) DTO and Article 23(5) of the TL allow for an exemption from the reporting requirement for “professional legal advisers” in privileged circumstances.

696. The POCL and the TL define “legal privilege” to extend to any communication between the legal professional and the client or his/her representative for the purposes of giving legal advice or in contemplation of and for the purpose of legal proceedings, whereby the privilege extends to all items in enclosed or referred to in such communications if those items are in possession of someone who is entitled to their possession. Items held with the intention of furthering a crime are not privileged.

697. The DTOL contains a slightly different definition, covering any communication between a professional legal adviser and a client which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to confidentiality of communications. Communications held with the intention of furthering a criminal offense would not be covered by the legal privilege as defined under the DTOL.

698. The Handbook for Lawyers further clarifies that the privilege only applies to those communications which directly seek or provide or which are given in a legal context, that involve the lawyer using his legal skills and which are directly related to the performance of the lawyer’s professional duties. With respect to advice relating to a transaction in which a lawyer has been instructed for the purpose of obtaining legal advice, legal privilege would apply even if the instructions did not contain advice on matters of law and construction.

699. The practitioners with whom the assessors met stated that they would determine the application of the legal privilege based on the transaction or matter in question and not based on the client. Therefore, if a certain matter relating to one specific client is privileged but a different matter of the same client is not, the privilege would attach only to the first matter and would not prevent the filing of an SAR for the second.

700. All law firms with whom the assessors met had a designated MLRO on the senior management level responsible for receiving, reviewing and, if applicable, forwarding SARs to the JFCU directly. It was stated that the MLROs would review staff reports to substantiate that there are grounds for suspicion before actually submitting a report to the JFCU. All Jersey legal professionals combined file an average of 15 SARs per calendar year.

STRs Related to Terrorism and its Financing (applying c. 13.2 to DNFBPs):

701. The obligations of DNFBPs to report suspicious activity related to terrorist financing are the same as those applicable to financial institutions. See section 3 above for an analysis of these requirements.

No Reporting Threshold for STRs (applying c. 13.3 & IV.2 to DNFBPs):

702. Reporting obligations set out in Article 34D of the POCL, Article 40A of the DTOL, and Article 23 of the TL cover circumstances where another person is known or suspected to be engaged in money laundering or there are reasonable ground for knowing or suspecting that another is so engaged. This encompasses the reporting of attempted transactions and business that has been turned away. There is no de minimis threshold for such reporting. See section 3 above for an analysis of these requirements.

Making of ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying c. 13.4 and c. IV.2 to DNFBPs):

703. Suspicions related to tax matters must be reported. See section 3 above.

Additional Element—Reporting of All Criminal Acts (applying c. 13.5 to DNFBPs):

704. DNFBPs are required to report to the JFCU when they know or suspect or have reasonable grounds for knowing or suspecting that funds are the proceeds of any criminal act that would constitute a predicate offense in Jersey. See section 3 above for an analysis of these requirements.

Protection for Making STRs (applying c. 14.1 to DNFBPs):

705. The protections for directors, officers, and employees of DNFBPS from both civil and criminal liability for breach of any restriction on disclosure of information imposed by statute, contract or otherwise if they report their suspicions to the MLRO or to the JFCU are the same as those for directors, officers, and employees of financial institutions. For an analysis of these arrangements, see the discussion in Section 3.7 above.

Prohibition Against Tipping-Off (applying c. 14.2 to DNFBPs):

706. The tipping off provisions applicable to DNFBP directors, officers, and employees are the same as those applicable to directors, officers and employees of financial institutions. See the discussion of R 14 in Section 3.7 above, where some weaknesses in the Jersey provisions against tipping-off are analyzed.

Establish and Maintain Internal Controls to Prevent ML and TF (applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPs):

707. All Jersey DNFBPs are subject to the requirements of the MLO to maintain appropriate policies and procedures to prevent and detect ML and FT. These obligations are contained in Article 37 of POCL and Article 11(1) of the MLO. Articles 11(9) and 11(11) of the MLO require communications of these policies and procedures to employees. Obligations to have policies and procedures with respect to CDD are contained in Article 11 of the MLO. Obligations to make and retain records are contained in Articles 19 and 20 of the MLO. Requirements to monitor transactions are contained in Articles 13 and 3 of the MLO. Reporting obligations are contained in Article 34D of

the POCL, Article 40A of the DTOL, and Article 23 of the TL, as well as in Part 5 of the MLO. The general obligations in the POCL, DTOL, TL, and MLO are supplemented by additional detailed regulatory requirements contained in the Handbooks for the DNFBP sectors.

708. The Jersey arrangements concerning Recommendation 15 for DNFBPs are the same as those for financial institutions. While almost all of the specific topics addressed in R 15 are referenced in various sections of laws or regulations, some of Jersey requirements are not spelled out with the precision called for in R. 15. See section 3 above for an analysis of the strengths and weaknesses of these arrangements. The requirement for DNFBPs to have compliance management arrangements are set out in Article 11(1) of the MLO. The requirements for designation of an MLCO at senior level are set out in Article 7 of the MLO and those for the designation of an MLRO are set out in Article 8. These statutory requirements are amplified in the corresponding regulatory requirements included in the Handbooks for the DNFBP sectors. The requirement for the MLCO and the MLRO to have timely access to necessary information is contained in Articles 7 and 8 of the MLO and also the various Handbooks which state that the officers must have: “unfettered access to all business lines, support departments and information necessary to appropriately perform the function.” In the case of estate agents and high value good dealers, there is no mention in the Handbook for Estate Agents and Dealers in High-Value Goods of access by the MLRO (though the provisions of the MLO still apply).

Independent Audit of Internal Controls to Prevent ML and TF (applying c. 15.2 to DNFBPs):

709. The requirement for DNFBPs to have an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls is addressed in Article 11(1) of the MLO which requires DNFBPs to establish and maintain procedures for monitoring and testing the effectiveness of its systems and internal controls. Regulatory requirements in the Handbooks state that: “In maintaining the required systems and controls, a firm must ensure that the systems and controls are implemented and operating effectively. Guidance addresses the scope and intensity of the audit function based on considerations such as the size of the firm, the nature, scale and complexity of its business, risk considerations, etc.

Ongoing Employee Training on AML/CFT Matters (applying c. 15.3 to DNFBPs):

710. The requirements for DNFBPs to train employees are established in Articles 11(9), (10) and (10A) of the MLO. Regulatory requirements in the Handbooks detail the training requirements more fully, stating that: firms must:

- “Ensure that relevant employees are adequately screened when they are initially employed, aware of the risks of becoming concerned in arrangements involving criminal money and terrorist financing, aware of their personal obligations and internal policies and procedures concerning measures to combat money laundering and terrorist financing, and provided with training” and,
- ”Ensure that employees are kept informed of new developments and risk factors connected with money laundering and terrorist financing. Such training must:
 - be tailored to the business and relevant to the employees to whom it is delivered;
 - highlight to employees the importance of the contribution that they can individually make to the prevention and detection of money laundering and terrorist financing; and
 - cover key aspects of legislation to prevent and detect money laundering and the financing of terrorism.”

Employee Screening Procedures (applying c. 15.4 to DNFBPs):

711. The employee screening requirements for DNFBPs are set out in the regulatory requirements in the Handbooks which state that: “A firm must vet and monitor the competence and probity of relevant employees”. However, there is no such provision in the Handbook for Estate Agents and Dealers in High-Value Goods.

Additional Element—Independence of Compliance Officer (applying c. 15.5 to DNFBPs):

712. Statutory and regulatory requirements require the MLCO and MLRO to be appointed at a senior level, to have unfettered access to senior management, and to be able to act independently.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

713. Article 11 of the MLO sets out the requirement of persons subject to the Schedule 2 of the POCL to have risk-based policies and procedures which include determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with jurisdictions that do not, or insufficiently apply, the FATF Recommendations. This requirement and its implementation with respect to financial institutions are described and analyzed in Section 3 above. The discussion in Section 3 applies equally to all DNFBPs, which are subject to the same requirements. In addition to statutory requirements, additional regulatory requirements are imposed through requirements in the Handbooks issued by the JFSC. All DNFBPs are subject to the Handbooks and to JFSC supervision for compliance with AML/CFT obligations. However, it is only as of September 2008 that the JFSC regulatory framework has been extended to lawyers, accountants, real estate agents and high value dealers.

714. Appendix D of the various Handbooks, which is available on line, provides details of jurisdictions that are covered by a FATF statement (or statement by an associate FATF member) or statement made by one or more jurisdictions, with respect to the anti-money laundering/combating the financing of terrorism regime in a particular jurisdiction, plus any associated public statements. The table is updated as and when the JFSC becomes aware of necessary amendments.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

715. As analyzed in section 3, above.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

716. As analyzed in section 3, above.

Effectiveness of implementation

717. The table below shows the number and percentage distribution of SARs filed by DNFBPs over the three year period, 2005–2007. Reports by TCBs, which have been supervised for compliance with SAR obligations throughout this period, have regularly accounted for 20 percent or more of all SARs filed by Jersey firms. The Post Office, an MSB which came under regulation for AML/CFT

compliance in mid-2007, has been a significant SAR reporter over the same period. Lawyers and accountants, who were not supervised for compliance during the period covered by the table, have accounted for small percentages of all reports filed each year. In comparing the share of SARs reported it should be noted that TCBs and the Post Office are, in all likelihood, involved in a significantly larger number of transactions than are lawyers and accountants.

SARs filed by DNFBPs						
Number, percent of total reports						
	2006		2007		2008	
TCBs	216	21%	362	24%	328	23%
Lawyers	12	1%	14	1%	37	3%
Accountants	9	1%	19	1%	12	1%
Estate Agents	-	-	-	-	-	-
High-Value Dealers	-	-	-	-	-	-

718. The obligation of TCBs to report SARs has been in place for several years (but for most was introduced in February 2008). As the table above indicates, for the years 2006–08, there was a limited amount of reporting by lawyers and accountants but none by real estate agents and high value dealers. Trust service businesses, in contrast, regularly filed about 20 percent of SARs. During this period, TCBs were subject to monitoring and supervision for compliance with their SAR reporting obligations. The other DNFBPs were not.

719. The assessors met with a cross section of the DNFBP sector, including TCBs, lawyers, accountants, real estate agents, and high value dealers. In all cases, counterparts were familiar with their obligations to report SARs. TCBs, who have had several years experience with AML/CFT regulation, were quite familiar with their regulatory obligations to establish and maintain internal policies and procedures and to screen and train employees, as well as to report. As emphasized, the regulatory requirements applicable to lawyers, accountants, real estate agents, and high value dealers have become effectively only recently. Nevertheless, as a result of extensive prior outreach and consultations by the authorities, these other DNFBP sectors also appeared to be broadly familiar with the requirements in the new regulatory Codes of Practice (Handbooks) and to be taking steps to implement regulatory requirements. JFSC monitoring of compliance with Recommendation 16 requirements by TCBs have been in place for some time and is well developed. For newly regulated DNFBPs, however, although there has been a good deal of JFSC outreach to explain requirements and to establish supervisory expectations, formal compliance monitoring had only recently begun at the time of the on-site visit.

720. In summary, Jersey has recently put in place an updated SAR regime for all DNFBPs. That regime, by design, seeks to address all the relevant criteria of the FATF Recommendations. As analyzed in Section 3.7 above, the formal legal framework for SAR reporting now satisfies most of the relevant criteria. However, this framework has only recently been extended to lawyers, accountants, estate agents, and high value dealers. Supervision of these sectors had only begun to be undertaken. Hence, except for the TCB sector, effective implementation of the SAR regime for DNFBPs has not yet been fully tested.

4.2.2. Recommendations and Comments

- The authorities should continue to conduct on-site monitoring of SAR reporting practices by lawyers, accountants, and estate agents.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none"> • Low level of STR reporting by those DNFBP sectors that until very recently were not subject to the MLO nor supervised for AML/CFT compliance. • Effective implementation by lawyers, accountants, and estate agents under new regulatory requirements has not been fully tested by the authorities.

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

c. 24.1

721. Under the general prohibition of the Gambling (Jersey) Law 1964, as amended, casino gaming is illegal in Jersey, though it is possible for such business to be carried on outside Jersey by Jersey companies. Notwithstanding this prohibition, if casino gaming were to be legalized, the AML/CFT framework for DNFBPs would apply to casinos in the same way it currently applies to any gaming activities carried on outside Jersey by Jersey Companies. Under Schedule 2 of the POCL “the business of operating a casino” is an activity subject to the POCL and the MLO. Articles 13 and 4 of the MLO provide that identification measures CDD procedures must apply to any transaction amounting to not less than EUR3,000 carried out in the course of operating a casino. This is in addition to identification measures that must apply where any business relationship is formed.

722. While casino gaming is illegal in Jersey, the Gambling Regulations enable remote gambling operators to locate servers for online gambling activities (which could include casino gaming) in Jersey, but only as part of the provision for business continuity in cases of a verified disaster in their home jurisdiction. The Gambling Regulations require both gambling operators and local hosting facility providers to be licensed. Regulation 25 of the Gambling Regulations provides that it shall be a condition of a remote gambling facility provider’s license that the holder of the license and his or her employees or agents shall comply with the laws of Jersey relating to money laundering, drug trafficking, data protection, and terrorist financing. This allows both regulatory and criminal action to be taken when there is a failure to comply with a law.

723. The JFSC informed the assessors that it is not aware of any Jersey companies carrying on the business of operating a casino outside Jersey. At the time of the on-site visit, only one application for

a remote gambling facility provider had been received (hosting) and is currently subject to due diligence checks by the Economic Development Department.

24.1.1

724. Under the SBL all relevant business activities listed in Schedule 2 of the POCL, including the business of operating a casino, (including an internet casino), must be registered by an AML/CFT supervisory body. The JFSC is the authorized AML/CFT supervisory body for all DNFBPs. The SBL provides the JFSC with a number of tools and powers to monitor and ensure compliance by all relevant persons, including casinos. Under Article 8(2) of the SBL, a designated supervisory body has a general power to conduct reasonable routine examinations. As part of this general power, a designated supervisory body may:

- require a relevant person to supply information in a format and at times as specified by the body;
- require a relevant person to provide answers to questions; and
- require a relevant person to allow officers or agents of a designated supervisory body to enter the relevant person's premises.

A designated supervisory body is also able to require the provision of information and documents under Article 30 of the SBL, to conduct investigations under Article 31 of the SBL, and on the basis of an order issued by the Bailiff to enter and search premises with a Police officer under Article 32 of the SBL.

725. The Gambling Regulations enable remote gambling operators to locate servers for online gambling activities in Jersey, but only as part of the provision for business continuity in cases of a verified disaster in their home jurisdiction. The Gambling Regulations require both gambling operators and local hosting facility providers to be licensed before any operation can be carried out from Jersey. The Minister for Economic Development is the licensing authority for such activities. See Regulation 15 of the Gambling Regulations 24.1.2

726. Casinos gaming is illegal in Jersey and hence no competent authority is specifically designated to license casinos. Article 10 of the SBL makes it an offense for a relevant person to carry on an activity in or from within Jersey (or through a Jersey company) that is specified in the Schedule to the SBL without being registered under the SBL. The Schedule includes the business of operating a casino. Article 13 of the SBL deals with an application for level 1 registration (specified in the Schedule to the SBL) – by a person in the business of operating a casino. Articles 14 and 15 of the SBL set out the provisions that apply to granting or refusing a license by a designated supervisory body.

727. Article 14(3) of the SBL provides that a designated supervisory authority may refuse to register a casino on the ground that the applicant, a principal person in relation to that applicant, or a key person in relation to that applicant is not a fit and proper person. Article 14(4) provides that a person is not a fit and proper person if, *inter alia*, that person:

- has been convicted of a ML or FT offense;
- has been convicted of an offense involving fraud or other dishonesty;
- is otherwise considered not to be fit and proper for reasons related to the risk of ML or FT.

728. Article 23(2)(b) of the SBL provides that a direction may require any principal person, key person or person having a function to be removed. Article 23(2)(c) of the SBL provides for a direction to ban any individual from being employed by a relevant person. The term “principal person” is defined in Article 1(1) of the SBL and includes any director and any person who directly or indirectly holds 10 percent or more of the share capital issued by a relevant person. The term “key person” is also defined in Article 1(1) and includes a MLCO and a MLRO.

729. Under the general prohibition of the Gambling (Jersey) Law 1964, as amended, casino gaming is illegal in Jersey. However, the Gambling Regulations enable remote gambling operators to locate servers for online gambling activities in Jersey, but only as part of the provision for business continuity in cases of a verified disaster in their home jurisdiction.

730. The Gambling Regulations require both gambling operators and local hosting facility providers to be licensed before any operation can be carried out from Jersey—and due diligence is conducted on any person holding 5 percent or more of the shares in the gambling operator and host facility provider. See Regulation 15 of the Gambling Regulations.

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

731. Under the SBO, which came into force in September 2008 the JFSC has been designated as the AML/CFT supervisor for the financial services business activities listed in Schedule 2 of the SBL. This is in addition to Article 5 of the SBL which makes the JFSC the supervisory body to exercise supervisory functions in respect of “any regulated person” (broadly—those businesses that it prudentially supervises). The effect of this is that the JFSC is responsible for oversight of AML/CFT compliance for all activities that are listed in Schedule 2 of the POCL. Schedule 2 of the POCL is divided into Part A and Part B. Part A covers Businesses Regulated by the JFSC and Part B covers Other Businesses. Of the Jersey DNFBPs, the business conducted by TCBs is Part A business and is prudentially supervised by the JFSC as a financial service business. The relevant businesses conducted by lawyers, accountants, real estate agents and high value dealers is Part B business and is subject to JFSC regulation for AML/CFT compliance.

732. In order for the JFSC to exercise its powers as AML/CFT supervisor, persons carrying out Level 1 and Level 2 activities in the Schedule to the SBL must register with the JFSC. Lawyers, accountants, estate agents, and high value dealers that carry on activities that are specified in Schedule 2 of the SBL are required to register at “level 2”. Application for registration began in late September 2008 with the transitional application period open through December 19, 2008. Any person that is carrying on a business that is prudentially supervised by the JFSC is not required to be registered under SBL--on the basis that such persons are already registered under other legislation. Persons that are prudentially supervised are otherwise subject to the SBL.

733. R 24.2.1.a As discussed in section 3 above, the JFSC has a range of powers under the FSJL (and other regulatory laws) to supervise and to enforce the compliance by prudentially supervised financial services businesses (Schedule 2 of the POCL, Part A businesses) with their responsibilities as financial services businesses, including their AML/CFT responsibilities. TCBs fall into this category. In addition to this, the SBL and SBO provide the legal framework for an authority (or authorities) to be designated as the supervisor for monitoring and enforcing compliance by all POCL Schedule 2 firms with their AML/CFT obligations. Article 5 of the SBL makes the JFSC the supervisory body to exercise supervisory functions in respect of “any regulated person” (broadly—

those businesses that it prudentially supervises) and the JFSC has been designated as the AML/CFT supervisor for persons carrying on an activity listed in Schedule 2 of the SBL.

734. A combination of the SBL and SBO gives the designated supervisor (the JFSC) a range of powers to supervise and to enforce compliance. Supervisory powers include the power to issue Codes of Practice, to monitor, to conduct reasonable routine inspections, to require that questions be answered and the power to enter premises. Enforcement powers include the power to issue directions (which includes the power to restrict, or limit, or prohibit activities or to direct a person to cease operations and wind up its business), the power to issue public statements, the power to require provision of information and documents, the power to appoint investigators, the power to enter and search premises with a Police officer (on the basis of an order made by the Bailiff). Additional enforcement actions may be undertaken under Court authority.

735. R. 24.2.1.b Frontline supervision of trust companies is undertaken by the JFSC's trust company business team – part of the Supervision Division- with a professional staff of 18. Supervision of other DNFBPs is carried out by the AML Unit with a staff of five. The AML Unit has been actively involved in developing the regulatory framework for lawyers, accountants, real estate agents and high value dealers, including development of Handbooks, outreach, consultation and training, preliminary supervisory visits, and developing onsite and offsite supervisory programs. As the preparatory phase winds down, the AML Unit will focus on implementing its onsite and offsite supervisory programs. These teams, in conjunction with other JFSC support units, appear to have adequate technical and human resources for the JFSC to carry out its responsibility to supervise DNFBPs.

Guidelines for DNFBPs (applying c. 25.1):

736. The JFSC has issued a Handbook for each of the DNFBP sectors. Trust companies are covered within the Handbook for Regulated Businesses. Separate handbooks have been published for lawyers and for accountants, and a composite handbook has been published for estate agents and high value dealers. The Handbooks summarize the risks and vulnerabilities of each sector; they lay out the statutory and regulatory requirements relevant to each sector; and they provide detailed guidance on how firms, following a risk-based approach, are expected to implement their AML/CFT responsibilities.

737. All categories of lawyers, including foreign lawyers, are supervised by the JFSC for compliance with the AML/CFT requirements under Jersey law pursuant to Article 2 SBO. Article 3 of the Order, however, limits the JFSC's mandate to 18 months after enactment of the Order. Upon expiration of those 18 months, the Minister of Economic Development will issue a new designation. The lawyers the assessors met with as well as representatives of the Jersey Law Society expressed a certain degree of discomfort with the current situations, as the JFSC's powers to access documents for supervisory purposes may conflict with professional legal privilege.¹⁸ While there seems to be a clear

¹⁸ In October 2008, the AG upon request of the JFSC provided advice that has been incorporated into the Handbook for Lawyers. This advises lawyers to keep their CDD files separate from other client files, thus avoiding any potential conflict between legal privilege and the JFSC's mandate to supervise the legal profession. However, since at the time of the assessment mission the advice had just been issued, it had not yet been established how this would be applied in practice and, in particular, whether the information contained in the CDD files would be sufficient to allow for the JFSC to properly conduct its functions.

preference by practitioners to have the Jersey Law Society take over the supervisory role from the JFSC, due to resource shortages as well as a lack of enforcement powers granted to the Jersey Law Society, this is currently not feasible. Both the JFSC and the Jersey Law Society stated that they expect the mandate of the JFSC to be extended.

738. Overall, about 40 law firms are supervised by the JFSC. Representatives of the JFSC stated that at the time of the mission, three onsite visits of lawyers had been conducted. On all three occasions, the JFSC provided the law firm with six weeks' notice and requested that the firm fill out a self assessment questionnaire and provide a copy of their AML/CFT procedures. None of the onsite visits involved the review of actual client files or led to the drafting of an audit report. For lawyers admitted under the Advocates and Solicitors (Jersey) Law 1997, in addition to the general sanctions for violations of the AML/CFT obligations as contained in the POCL, disciplinary procedures before an independent Disciplinary Committee may be instituted. The sanction power of the Committee is limited, however, to issuing a rebuke. In more serious cases, it may refer a case to the Royal Court, who in turn may impose a fine, or even suspend or revoke the lawyer's license. Complaints against foreign lawyers received by the Law Society may be forwarded to the supervisory body in the licensing jurisdiction.

4.3.2. Recommendations and Comments

- The JFSC should continue with testing implementation of AML/CFT requirements for all DNFBPs not previously subject to its supervision.

4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	LC	<ul style="list-style-type: none"> • Requirements for certain DNFBPs are new and their implementation was incomplete at the time of the assessment
R.25	C	

4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Application of FATF Recommendations to other Businesses and Professions (c. 20.1)

Legal Framework:

739. In line with the approach followed in the EU, relevant FATF Recommendations have been applied to the following non-financial businesses and professions:

- The provision of external accountancy services, advice about the tax affairs of another person, audit services, and insolvency services.
- The sale of high-value goods.

- The provision of investment advice.
- Those providing advice to undertakings on capital structure and industrial strategy as well as services relating to mergers and the purchase of undertakings.

Implementation

740. Of these five categories of businesses and professions, some providers are already subject to AML/CFT regulation, either as a financial institution or as a DNFBP. As discussed in 3 above, accountants who provide external accountancy services are subject to AML/CFT preventive measures requirements. Likewise, investment advice is defined as a financial service business in Article 2(2)(c) of the FSJL and regulated under that law by the JFSC, including for AML/CFT compliance. See discussion of financial institutions in sections 3.1 and 3.2 above. Advice on capital structure and industrial strategy as well as services related to mergers and the purchase of undertakings is frequently, but not exclusively, provided by lawyers, accountants, or TCBs.

741. Schedule 2 of POCL brings all high value dealers, not just dealers in precious metals and stones, within the scope of the AML/CFT regime. The Schedule 2 definition is:

(1)“High value dealer” means persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least EUR15,000 (or sterling equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(2) In this paragraph, “cash” means any of the following in any currency-notes, coins, travelers’ checks, and bearer negotiable instruments.”

The supervisory practices of JFSC with respect to dealers in precious metals and precious stones discussed in the DNFBP section above apply equally to all high value dealers. The regime for high-value dealers came into force in September 2008. In anticipation of this, JFSC engaged in an active outreach program with high value dealers such as car dealers and yacht brokers explaining their AML/CFT obligations. According to the authorities, prior to announcement of the impending new regime, they had observed occasional high-value cash transactions, particular in yacht purchases. Subsequently, numerous high-value dealers have told the JFSC that they no longer accept cash payment above EUR15,000 and spot checks by JFSC confirm that these high-value dealers have adopted the required internal controls to make this policy effective.

Modernization of Conduct of Financial Transactions (c. 20.2):

742. Jersey’s AML/CFT Strategy Group last considered in July 2007 what measures to take to encourage the development of modern and secure techniques for conducting financial transactions that are less vulnerable to ML. The following matters were taken into account.

- The Jersey market is well served by banks and other money transmission businesses which offer a variety of modern and secure techniques for conducting financial transactions, e.g., internet banking, debit/credit cards, electronic money transfers, and checks.

- Over the past few years, the U.K. has seen an ever-increasing use of electronic methods of payment.
- Statistics from APACS (the U.K. trade association for payments services) which are likely to be similar in Jersey, indicate that:
 - 60 percent of all retail spending is paid for by debit or credit card;
 - 84 percent of all adults hold a debit card;
 - Nine out of 10 debit/credit cardholders now hold a chip and PIN card; and
 - Spending on plastic cards has grown fourfold in the past 10 years.

743. Jersey has a sophisticated telecommunications infrastructure that provides (amongst other things) cost-effective access to a broadband internet connection. Consequently, many Jersey residents have the ability to easily access secure on-line purchasing and banking facilities. (In 2006, 53 percent of Jersey homes had a broadband connection. In 2007 this had increased to 84 percent.) Jersey's domestic currency has a modest maximum denomination of note (GBP50), which should discourage consumers from making large payments in cash. Although U.K. currency is accepted in Jersey (therefore Scottish GBP100 notes are sometimes seen), the States' Treasury is encouraging local banks to use Jersey notes whenever possible which has resulted in fewer U.K. notes circulating in the economy.

744. The Handbook for Regulated Businesses includes a section to guard against the financial exclusion of certain categories of Jersey residents from financial products and services. The alternative CDD measures that are set out therein for low-risk applicants are intended to allow all residents to have access to basic banking facilities. This should reduce their reliance on cash to pay for goods and services, particularly as most banks will offer a debit card facility (although some cards may have limitations on their use).

745. Planning is underway to bring forward legislation in 2009 that is designed to encourage the provision of electronic money ("e-money") in Jersey. Currently, the provision of e-money in Jersey may be restricted to top-500 banks (measured by tier 1 capital). Jersey's authorities are actively considering submitting a request to the European Payments Council for Jersey to be admitted to membership of the Single Euro Payments Area, which will make electronic payments in Europe cheaper, quicker, and easier. In addition, payment systems that are available to migrant workers (particularly those from Portugal and Poland) continue to be kept under review. At the present time, it is considered that there is no need for any measures to be taken, as the private sector is responding to increased demand in this area.

4.4.2. Recommendations and Comments

none

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

Legal Framework:

746. As outlined under section 1.5 of this report, Jersey law allows for the incorporation of the following types of legal entities: private companies, public companies, and Limited Liability Partnerships.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

747. Jersey has three measures in place to obtain, maintain, and verify beneficial ownership information for companies and LLPs, namely: the requirement to obtain JFSC consent pursuant to the COBO prior to issuing shares or admitting members; the requirement to have a registered office in Jersey, given that providing such office services is a regulated activity and thus subject to the AML/CFT requirements outlined in Section 4 of this report; and the requirement for companies to maintain shareholder and director registers and to file annual returns.

748. According to Article 2 of the COBO¹⁹, prior to issuing any shares or admitting any person to become a member of a Jersey company in any form, the consent of the JFSC has to be obtained. The COBO does not limit the factors the JFSC may consider in making the decision as to whether or not consent will be given in a specific case. Rather, the JFSC is provided with absolute discretion.

749. Since the enactment of the COBO, all Jersey companies have been required to disclose information on their beneficial owners at the time of incorporation. While the authorities stated that the scope of the required information varied and expanded over the years, certain beneficial ownership information had been obtained as far back as 1958 when the COBO first came into force. While the current standard application form for JFSC consent does not define the term “beneficial owner”, it expressly asks for information on “ultimate beneficial owners”, including date of birth, occupation, address, and place of birth, and therefore covers all beneficiaries of the company.

750. Article 12 of the COBO further provides that the JFSC may base its consent on certain conditions. In addition to the initial disclosure, the JFSC now provides consent on the condition that its approval is obtained prior to any subsequent changes to the ownership or control structure of a

¹⁹ The COBO was introduced as a post-war measure in the Channel Islands and the U.K. in 1947 to provide the government with greater control over the economy and any investments after World War II, including over foreign investments through domestic companies. Under the COBO, all Jersey companies and LLPs must obtain consent from the JFSC before issuing any shares, securities, subscriptions, or sales or exchange of any partnership interest. To grant the consent, for a company, the JFSC requires disclosure of the name, address, date of birth and occupation of each ultimate beneficial owner of the company with a holding of 10 percent or more in the company.

Jersey company. If, however, the company is provided with any services by a registered TCB, or the combined effect of all changes to the ownership or control of the company is that any person holds less than 25 percent of the legal ownership and/or control of the company, an exemption from the updating requirement applies. In such situations, beneficial ownership information still has to be provided to obtain initial consent. In addition, full details of beneficial ownership and control must be held by TCBs as outlined below.

751. In addition, any Jersey company or LLP is required to have and provide the Registrar with the address of a registered office in Jersey and, providing a registered office or business address for a company or partnership by way of business is a regulated activity pursuant to Schedule 2 of the POCL. As such, TCBs are subject to the CDD measures of the MLO and, pursuant to Articles 2 and 3, are under an obligation to identify and verify the identity of the beneficial owners and controllers of the company. Changes of the registered office take effect only upon filing of the change with the Registrar. In special circumstances, the company may have a grace period of 14 days to inform the Registrar of any change with respect to the registered office. For public companies, information on all directors also has to be registered with the Registrar.

752. The term “by way of business” is not defined anywhere in the POCL. However, the authorities stated that the term would be interpreted quite broadly. This was confirmed by a legal opinion, written by a Jersey law firm upon the request of the JFSC, which states that the term would include any person acting with a view to obtain a reward, fees, or benefits of any kind and holding himself out as willing to provide such services for one or more companies. The opinion stated that the term would also cover “one off” contracts on a self-employed basis.

753. Furthermore, Article 41 of the CL requires every company to keep a shareholder register as discussed below, Article 83 obliges companies to keep a director and secretary register and Article 71 requires each company to provide an annual return to the Registrar, listing the legal owners of the company as at January 1 each year.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

754. All legal entities incorporated in Jersey obtain legal personality upon registration with the Companies Register. While the CL does not require that the Registrar be provided with information on beneficial ownership, the Register contains the names and addresses of each founder, of the registered office, and with respect to public companies, also the name, address, and other particulars of each director. To ensure that registered information is accurate and current, changes to the memorandum or articles of association have to be filed with the Registrar within 21 days after the passing of the resolution and changes to the registered office are generally valid only upon registration.

755. All information and documentation held at the Companies Registry is accessible by the public, including online. Through the information contained in the Registry, law enforcement and other competent authorities are able to link a legal entity with a specific TCB, thus locating beneficial ownership information.

756. Information obtained and maintained by the JFSC pursuant to the COBO may be accessed by other supervisory agencies from the JFSC under Article 36 of the FSJL. As outlined above, the JFSC

provides consent under the COBO under the condition that any changes in the ownership of companies not administered by registered TCB and amounting to more than 25 percent are subject to approval by the JFSC, with a view to ensuring that for such companies that information that is held by the JFSC is, at all times, accurate and complete.

757. With respect to beneficial ownership and control information maintained by the TCBs, Article 8 of the SBL grants the JFSC a wide range of powers to access any information and documentation held by all supervised persons. Pursuant to the provision, the JFSC may require the production of information, the provision of answers to questions posed, and access to the premises of the supervised person. Law enforcement may apply for a court order to access any information and documentation held by TCBs.

758. Shareholder registers maintained at the companies are accessible by the public, albeit for a small fee. Director registers are freely accessible by company directors and the Registrar, but not by the public—though the public may access information on the directors of a public company through the Registrar of Companies. Annual returns filed are public information.

Prevention of Misuse of Bearer Shares (c. 33.3):

759. Jersey law does not expressly prohibit the issuance of bearer shares. Article 41 of the CL, however, provides that every company has to keep a register of its members, including the name and address of each member, the number of shares held by the member and, if applicable, the numbers printed on each share. Pursuant to Article 42 CL, transfer of shares is only valid if an instrument of transfer has been delivered to the company. Upon receipt of the instrument, the company has to enter in its register of members the name and address of the transferee and the number of shares acquired. Pursuant to Article 41 CL, failure of a company to maintain shareholder registers can result in criminal prosecution of both the company and the officer at fault.

760. Thus, even in cases where bearer shares are issued, the company is obliged to obtain and maintain shareholder information on those shares, including the name and address of the shareholder. Through the shareholder register it is therefore ensured that ownership information is available with respect to all bearer shares.

761. In cases where a nominee shareholder is registered, the nominee would generally be a relevant person pursuant to Schedule 2 POCL and, thus, be obliged to obtain, verify and maintain beneficial ownership and control information pursuant to the MLO.

762. The authorities as well as TCBs the assessors met with stated that, in practice, bearer shares are not issued in Jersey. Jersey's AML/CFT strategy has not identified the use of bearer shares as an issue.

763. In addition, the provisions of the COBO apply and help ensure that beneficial ownership information on bearer shares would be available, should such shares be issued.

764. Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):

765. Financial institutions have full access to all information and documentation held at the Registry pursuant to the CL. However, no specific measures are in place to facilitate access by financial institutions to beneficial ownership and control information held by the TCBs or by the JFSC pursuant to the COBO, so as to allow them to more easily verify the customer identification data.

Effectiveness

766. Based on the conditions applied to legal entities by the JFSC pursuant to the COBO, information on the natural beneficiaries of all legal entities established in Jersey is obtained, verified, and maintained. Consent by the JFSC to issue any shares, subscriptions, or sales or exchanges of partnership interests is only given based on the condition that subsequent changes to the ownership or control structure of the Jersey legal entity are notified to the JFSC—though separate provisions apply in cases where companies are administered by TCBs. Any violations of this condition may be sanctioned with a withdrawal of the consent. This ensures that any information on the beneficiaries initially obtained is kept accurate and updated. Information held by the JFSC pursuant to the COBO is available to law enforcement (on the basis of a court order) and other supervisory authorities (based on Article 36 of the FSJL).

767. The requirement that all Jersey companies or LLPs have to have a registered office in Jersey further ensures that information on the beneficial owners is maintained and available to law enforcement agencies. Pursuant to Schedule 2 of the POCL, providing a registered office “by way of business” is a regulated activity and as such, subject to the CDD requirements of the MLO, including to fully identify and verify the identity of all beneficial owners, whereby “beneficial owner” is defined in line with the international standard to include the ownership and control structure of a company. While the term “by way of business” is not defined, a legal opinion obtained by the JFSC interprets the term broadly to even include “one off” contracts if the person providing the service does so with a view to obtaining a reward, fees, or benefits of any kind and holds himself out as willing to provide such services for one or more companies. Due to the broad interpretation of the term the measure therefore seems to apply—at a minimum—to all companies not commercially active. For those companies that do not fall under this measure, for example the grocery stores, restaurants or other businesses operating in Jersey, the COBO measure as well as the requirement to keep company shareholder and director registries would still ensure that information on the ultimate beneficiaries and controllers is available. As outlined above, law enforcement authorities have a wide range of powers to access information held and maintained by Jersey TCBs.

768. Furthermore, all Jersey companies, regardless of the legal form they take, are obliged to keep shareholder and director registers, both of which are readily accessible by the Registrar of Companies. For public companies, information on all directors also has to be registered directly with the Registry and is accessible by the public and law enforcement authorities. The shareholder registers are also accessible by the public and, therefore also law enforcement authorities. In the case of private companies, the registers of directors may be accessed by the Registrar and by law enforcement through a court order.

769. While bearer shares are not expressly prohibited under Jersey law, in practice they do not appear to be issued and if such a case would arise, the requirement to keep shareholder registers coupled with the COBO measure and the requirements under the MLO, ensures that beneficial ownership information would be obtained, verified, and maintained also for bearer shareholders.

770. In summary, while none of the measures in themselves would ensure that beneficial ownership information is obtained, verified, and maintained for all Jersey companies, taken together the applicable measures place Jersey in a very strong position to ensure that legal entities are transparent and that accurate, adequate, and current information concerning beneficial ownership and control of all legal persons is available to law enforcement and other competent authorities.

5.1.2. Recommendations and Comments

- none

5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	C	•

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

5.2.1. Description and Analysis

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

771. Trusts, general partnerships, as well as limited partnerships are legal arrangements available under Jersey legislation.

772. Pursuant to Schedule 2 of the POCL, any person who, by way of business, acts as or fulfills or arranges for another to act as or fulfill the function of trustees of an express trust conducts a regulated activity pursuant to the POCL and, as such, is subject to the full range of AML/CFT requirements as contained in the MLO. Article 2 of the MLO defines “beneficial owner” in line with the definition contained in the FATF standard and Article 3 of the MLO requires TCBs to identify the beneficial owner and to verify the identity.

773. Any person providing such services other than “by way of business” would not be required to register with the JFSC. As indicated in the section pertaining to legal persons, there is no definition of the term “by way of business.” However, the authorities provided a legal opinion that indicated that the term is to be interpreted rather broadly.

774. The POCL, through its Schedule 2, also adopts a limited number of narrowly-defined exemptions from the registration requirement for trust service providers, allowing a person falling under a certain category or providing services in certain circumstances to conduct trust activities without being subject to the CDD requirements under the MLO. Accordingly, there is no legal

requirement to obtain, verify, and maintain beneficial ownership information for such legal arrangements. An example of such an exemption is the provision of trust company business services from outside Jersey, where the only connection with Jersey is the residence of the customer. A further exemption from registration exists for companies, the purpose of which is to provide trust company business services in respect of a specific trust or trusts that do not solicit from or provide trust company business services to the public, and the administration of which is carried out by a person that is subject to Schedule 2 (a private trust company). However, in these cases, the obligations to comply with customer due diligence requirements would fall on the person that is subject to Schedule 2.

775. While the authorities could not provide the assessors with an estimate of the number of trustees operating in Jersey that are not covered by or are exempted from the registration requirements, the term “by way of business” is defined rather broadly and the exemptions in the POCL are drafted rather narrowly. This suggests that the vast majority of trustees and all professional trustees are covered by the obligations of the MLO.

776. While there is a general obligation under the Trusts (Jersey) Law 1984 for the trustee to keep accurate accounts and records of the trustee’s trusteeship and to exercise the trustee’s powers only in the interests of the beneficiaries and in accordance with the terms of the trust, there is no express obligation for the trustee to identify and verify the identity of all persons falling under the definition of beneficial owners, such as enforcers, beneficiaries, or persons exercising ultimate effective control over a legal arrangement, and to maintain records of the identity. While in the vast majority of cases the trustee will obtain and verify information on such persons in the course of the trust administration, the provisions of the Trusts (Jersey) Law 1984 do not require that beneficial ownership information is obtained, verified, and maintained in relation to all Jersey trusts.

777. As outlined in section 1.5. of this report, only limited partnerships but not general partnerships are subject to registration under Jersey law. The authorities stated that no information is held on the number of general partnerships in existence or the beneficial owners thereof. However, partnerships trading in Jersey generally wish to protect the business name that is used by registering it under the Registration of Business Name (Jersey) Law 1956, in which case the name and address of the individual partners will be available for public inspection.

778. For limited partnerships, Article 4 of the Limited Partnerships (Jersey) Law 1994 requires that a declaration, indicating the registered office of the LP and the full name and address of each general partner has to be filed with the Registrar. Any changes to the filed information have to be provided to the Registrar within 21 days pursuant to Article 5.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

779. As already outlined in the general section of this report, there is no requirement for trusts to be registered or to file information with a central authority. While registered trust service providers have to file an annual statement with the JFSC, those statements do not typically contain any information on the trusts administered, on the overall number of trusts, or on the amount of assets administered. However, the FSC, as part of the on-site examinations, obtains information on the number of trusts administered by TCBs and value of assets. All TCBs have been examined.

780. Article 8 of the SBL grants the JFSC a wide range of powers to access any information and documentation held by registered TCBs. Pursuant to the provision, the JFSC may require the production of information, the provision of answers to questions posed, and access to the premises of the supervised person. In the case of any trustees that are not covered by Schedule 2, it is questionable, however, how complete, accurate, and current beneficial ownership information held by such unregulated and unsupervised trustees would really be. Law enforcement may apply for a court order to access any information and documentation held by TCBs and any trustee that is not covered by Schedule 2.

781. Information on LPs held by the Registrar is publicly accessible pursuant to Article 32 of the Limited Partnerships (Jersey) Law 1994.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions)(c. 34.3):

782. Beneficial ownership information on legal arrangements held by TCBs is not publicly available. Therefore, financial institutions may not access such information from a public source to verify customer identification data. Effectiveness:

783. For all legal arrangements administered by trust service providers conducting such activity “by way of business”, Articles 2 and 3 of the MLO provide that trust service providers have to identify in all cases the beneficial owner or controller of a legal arrangement, including the ultimate beneficial owner or person controlling or otherwise exercising control over the management of a customer, and to take reasonable steps to verify the identity of those persons based on reliable information. While there is no definition of “by way of business” the term seems to be interpreted rather broadly and is intended to exclude only trustees acting in a family arrangement or similar situations. Information held by TCBs may be accessed by the JFSC pursuant to Article 8 of the SBL and be shared with law enforcement and other competent authorities pursuant to Article 36 of the SBL.

784. Trust service providers falling under one of the limited number of narrowly-defined exemptions under Schedule 2 of the POCL would be exempted from the CDD measures of the MLO. While the authorities could not provide an exact or estimated number of trustees operating outside the POCL or falling under one of the exemptions pursuant to Schedule 2 (except those relating to private trust companies), it appears that due to the wide interpretation of the term “by way of business” and the narrow scope of the exemptions, the vast majority of Jersey trustees and all professional trustees are covered by the obligations of the MLO to obtain, verify, and maintain information on the beneficial ownership of legal arrangements. In the case of any trustees that are not covered by Schedule 2, it is questionable, however, how complete, accurate and current any beneficial ownership information held by such unregulated and unsupervised trustees would be. Law enforcement may apply for a court order to access any information and documentation held by TCBs and any trustee that is not covered by Schedule 2.

785. In summary, it appears that the vast majority of trustees operating in Jersey are subject to the CDD obligations under the MLO. However, no measures other than the provisions of the Trusts (Jersey) Law 1984 that are set out above are in place to ensure that beneficial ownership information

is obtained, verified, and maintained for trusts administered by trustees not covered or exempted from the scope of the POCL (other than private trust companies).

786. Information on limited partnerships is available through the Registry. While general partnerships seem to be utilized only in a very limited manner, information on the beneficial ownership of general partnerships is not obtained under the MLO and maintained and therefore may not be available to law enforcement and other competent authorities. However, as stated above, many partnerships trading in Jersey protect their business name by registering it under the Registration of Business Names (Jersey) Law 1956, in which case the name and address of the individual partners will be available for public inspection.

787. No specific measures are in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.2.2. Recommendations and Comments

- Even though the vast majority of trust arrangements are covered by the CDD requirements of the MLO, the authorities should further seek to put in place measures to ensure that accurate, complete, and current beneficial ownership information is available for legal arrangements administered by any trustees not covered by, or exempted from, the registration requirements under the FSJL or SBL.
- The authorities should put in place measures to ensure that beneficial ownership information is obtained, verified, and maintained for all general partnerships.

5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	LC	<ul style="list-style-type: none"> • While the vast majority of trust arrangements are covered by the CDD requirements of the MLO, no measures are in place to ensure that accurate, complete, and current beneficial ownership information is also available for legal arrangements administered by any trustees not covered by or exempted from the registration requirement under the POCL. • Beneficial ownership information is not obtained, verified, and maintained for general partnerships.

5.3. Non-Profit Organizations (SR.VIII)

5.3.1. Description and Analysis

Introduction

788. The NPO Law, which came into effect in August 2008, requires non-profit organizations to register with the JFSC. The registration period closed on November 8, 2008. The definition of organizations required to register is fairly broad and includes organizations established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes with the intention of benefiting the public or a section of the public; and that raises or disburses funds in pursuance of those stated purposes. Organizations which have raised funds of less than GBP1,000 during the previous 12 months are not required to register.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

789. Information required for registration includes: the amount of funds raised in a year, the amount of funds disbursed, and whether the funds were raised and disbursed in Jersey or in other jurisdictions. In addition, registration requires a brief statement of purpose, objectives, and activities and a statement of the legal form. A substantial number of organizations (in the hundreds) were expected to seek registration but a final tally was not available during the assessment. Based on information supplied, the JFSC will carry out a systematic analysis of the NPO sector and its vulnerability to terrorist financing. While NPOs are now registered, the Commission does not regulate trusts. Some NPOs are administered by a TCB and, since the TCB is regulated, these are referred to as “regulated NPOs.” These “regulated NPOs” include some charitable trusts. As part of its review of the NPO sector, the JFSC will collect internal information on the nature, scope and direction of charitable funds flows through regulated NPOs, including charitable trusts.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

790. Jersey’s AML/CFT Strategy Group has actively engaged with the NPO sector in Jersey since January 2008, and proposals to oversee the NPO sector have been extensively reported in the press. Consultation with the NPO sector has involved the publication of a consultation paper, a feedback paper on the consultation, and culminated in a public meeting on April 10, 2008 attended by well over 200 people. FT risks were explained and typologies presented.

791. The public meeting was considered to be very well attended given Jersey’s population. Notwithstanding this, the JFSC is to publish information which highlights the vulnerabilities of NPOs, including pertinent typologies, with a view to encouraging NPOs to follow policies that promote transparency, integrity, and public confidence in the NPO sector in Jersey. The JFSC is also running “surgeries” to help NPOs register under the NPO Law.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector’s Resources or International Activities (c. VIII.3):

792. Article 4 of the NPO Law requires an NPO (but not a regulated NPO) to register where it is established in Jersey or is administered in or from Jersey, whether or not it carries on any activity in Jersey.

793. Article 9 of the NPO Law requires an NPO (but not a regulated NPO) to update the information provided to the JFSC at the time of registration, or subsequent to registration, where it changes.

794. Article 10 of the NPO Law allows the Minister for Economic Development to prescribe NPOs (but not regulated NPOs) that must provide a financial statement each year to the JFSC. The authorities clarified that it is the Minister's intention to prescribe such NPOs on the basis of a recommendation from the JFSC, and the JFSC's intention to identify any NPO that accounts for a significant portion of the financial resources under the control of the NPO sector and also a substantial share of the sector's international activities (a "significant NPO").

795. Article 11 of the NPO Law requires an NPO to keep financial records and to retain them for at least five years. It must also make those records available to the JFSC to enable the JFSC to carry out its functions under the NPO Law. In the case of a regulated NPO, the JFSC will access records through the FSJL.

796. Article 17 of the NPO Law requires the JFSC to help to determine if an NPO is assisting or being used to assist terrorism and it has power to monitor the activities of each NPO (in order to satisfy this obligation).

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

797. Registration information requires an NPO to state its purpose and objectives. Under the NPO Law, the JFSC may classify organizations into different categories, e.g., amount of funds raised and disbursed and whether the funds were raised and disbursed in Jersey or in other jurisdictions. Based on this analysis, some NPOs will be categorized as "prescribed" NPOs. All NPOs are required to provide information on their purpose, objectives and activities, as well as their structure. Prescribed NPOs may be required to provide additional information as prescribed. Based on the register that is held under the NPO Law, the JFSC must, if requested, inform a person if a name specified by that person is in the register, and, if so, provide the registration number and details of how the NPO may be contacted.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

798. Article 17 (1) of the NPO Law states that "it is an obligation of the JFSC to help to determine if an NPO is assisting or being used to assist terrorism." The law charges the JFSC to promptly review NPO filings to consider if there is a suspicion that the NPO is assisting or being used to assist terrorism, and to monitor the affairs of NPOs. Any evidence of suspicion is to be promptly reported to the Attorney General. Offenses under the NPO Law include: failure to register, failure to provide information, and providing false information. Deregistration is the specific sanction given under the law. Deregistration may be ordered by the Royal Court as a result of court proceedings related to the TL or by the Minister if he determines that the NPO has persistently failed to comply with its obligations under the NPO Law.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

799. NPOs in Jersey are registered. See discussion above.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

800. With respect to record keeping, Article 29 of the NPO Law makes it an offense to fail to keep required records, to keep false or misleading records, to fail to retain records for five years, to fail to make records available to the JFSC, or to provide the JFSC with false or misleading records.

Measures to ensure effective investigation and gathering of information (c. VIII.4):

801. The JFSC has effective means of information sharing with all domestic authorities relevant for potential terrorist financing concerns.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):

802. There are no barriers to JFSC sharing of NPO information with law enforcement investigations.

5.3.2. Recommendations and Comments

- Based on registration information, the authorities should analyze the FT vulnerability of the NPO sector

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	C	

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31 & R. 32)

6.1.1. Description and Analysis

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

803. Sharing of information between the law enforcement authorities and other stakeholders is formally provided for in the relevant legislation, creating a comprehensive and controlled cooperation/information network in respect of ML/TF issues.

804. Coordination is ensured at different levels:

- At operational level the Law Officers' Department, the JFCU and JFSC have regular formal meetings to facilitate the cooperation and coordination between these agencies. Moreover, there is almost daily communication between the agencies with respect to operational matters of mutual concern. The AG has a Joint Working Framework Agreement with the JFCU and has issued directions to the JFCU with respect to the dissemination of SARs. Members of the JFCU are often involved in joint operational activity with the Law Officers' Department when investigations are conducted under the provisions of the IOFL.
- At policy level, the AML/CFT Strategy Group, formed in January 2007, is chaired by the Chief Executive of the States, with the JFSC providing the secretariat. The Strategy Group is an active forum comprising representatives of JFCU, JFSC, Police, Customs and Immigration, Law Officers' Department, Economic Development Department, the Shadow Gambling Commission, and the Chief Minister's Department. Although the primary purpose of the committee is to provide policy advice, it is also a key consultative body in that it involves all the main stakeholders and is instrumental in determining strategies and analyzing the legislative framework.

805. At the administrative/legislative level, the Chief Minister is responsible for the formulation of Jersey's strategy to combat ML and FT. Together with the AG, the Chief Minister fulfils an important role in the development of primary and secondary AML/CFT legislation.

Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c. 31.2):

806. The JFSC holds regular meetings and consultations with industry representative organizations such as the Jersey Bankers' Association, the Jersey Association of Trust Companies, the Jersey Compliance Officers' Association, Association of Jersey Charities, Jersey Society of Chartered and Certified Accountants, the Law Society of Jersey, Association of English Solicitors Practicing in Jersey, and the Jersey Funds Association. Members of the JFSC and JFCU regularly attend association meetings and consult frequently with associations such as the Jersey Banking Association.

807. As a matter of policy, both the JFSC and the JFCU are readily accessible to regulated institutions and open to meeting them to discuss any matters, including those relating to AML/CFT

issues. The JFSC contains an AML unit which is heavily engaged in outreach programs designed to engage the regulated institutions at a high level.

808. Coordination and consultation is also provided for in legislation. SBL Article 22 provides for consultation between the JFSC with representative persons or bodies before the issuance of Codes of Practice.

809. Overall, therefore, the cooperation and coordination between the domestic authorities is well organized and effective. While the relative size of Jersey's community facilitates this process, it may also increase Jersey's vulnerability to regulatory capture in the development and implementation of AML/CFT measures. The authorities validly place an emphasis on inclusion of the financial sector in the development of pragmatic AML/CFT requirements and measures and it is important to balance this with the need to avoid compromising the effective implementation of measures that comply with the FATF Recommendations, for example, in the identification and verification of beneficial owner information.

6.1.2. Recommendations and Comments

none

6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	C	

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

Ratification of AML Related UN Conventions (c. 35.1):

810. As mentioned in section 1 of this report, Jersey is a British Crown Dependency and as such is not empowered to sign or ratify international conventions on its own behalf. Rather, the U.K. is responsible for Jersey's international affairs and, following a request by the Jersey Government, may extend the UK's ratification of any convention to include Jersey.

811. As a general principle, Jersey decides whether it wants a certain convention extended or not. If the decision is to extend it, a request for extension is forwarded to the UK. However, such extension is only requested once Jersey is satisfied that its legislation complies with any given convention. Once that determination has been made and an extension has been requested, the U.K. Home Office reviews Jersey's legislation to confirm that it is in compliance with the provisions of the particular convention and advises the Ministry of Justice and the Foreign and Commonwealth Office accordingly. A notice is then sent to the Secretary-General of the United Nations, informing him that the ratification has been extended to Jersey. The same process is applied to international protocols.

812. Whereas the U.K.'s ratification of the Vienna Convention has been extended to Jersey on July 7, 1998, extension of the Palermo Convention has been requested by Jersey but application not yet made by the U.K..

Ratification of CFT Related UN Conventions (c. I.1):

813. The U.K.'s ratification of the International Convention for the Suppression of the Financing of Terrorism ("FT Convention") has been extended to Jersey on September 25, 2008.

814. Of the remaining 15 international counter-terrorism related legal instruments, the Unlawful Seizure Convention, the Civil Aviation Convention, the Diplomatic Agents Convention, the Hostage Taking Convention, and the Nuclear Material Convention have been extended to Jersey.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):

815. Jersey has implemented most of the Vienna Convention's provisions relevant to the FATF Recommendations. However, the defense in Article 38(2) of the DTOL may undermine the application of criminal liability for the "acquisition, possession and use" of proceeds of drug-related offenses and self-laundering is not criminalized with respect to those acts. Furthermore, the measures to enforce foreign freezing/seizing and confiscation orders do not relate to all property required, including to property of corresponding value.

Implementation of SFT Convention (Articles 2-18, c. 35.1 & c. I.1):

816. Jersey's legislation meets most of the requirements of the Suppression of the Financing of Terrorism Convention. However, as outlined in section 2 of this report, the terrorist financing offense does not fully meet the requirements of the international standard and shortcomings have also been identified with respect to the enforcement of foreign freezing/seizing and confiscation orders relating to terrorist assets.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):

817. Jersey has implemented most of the Palermo Convention's provisions relevant to the FATF Recommendations. However, the defense in Article 33(2) POCL may undermine the application of criminal liability for the "acquisition, possession and use" of proceeds of drug related offenses and self-laundering is not criminalized with respect to those acts. Furthermore, the measures to enforce foreign freezing/seizing and confiscation orders do not relate to all property required, including to property of corresponding value.

818. Furthermore, the measures to confiscate proceeds of crime and instrumentalities used/intended for use in the crime are not fully in line with the international standard, as outlined under section 2 of this report.

Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2)

819. As discussed under Special Recommendation III, Jersey's implementation of UNSCRs 1267 and 1373 seems to be largely sufficient. However, no formal procedures governing the receipt and assessment of requests based on foreign freezing lists are in place and the measures available do not

expressly extend the definition of ‘funds’ subject to freezing to cover assets ‘jointly’ or ‘indirectly’ owned or controlled by the relevant persons.

Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):

820. In addition to the above referenced conventions and protocols, the 1959 European Convention on Mutual Legal Assistance in Criminal Matters has been extended to Jersey and extension of the U.K.’s ratification of the 1990 Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and of the UN Convention Against Corruption has been requested by Jersey.

6.2.2. Recommendations and Comments

- The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented.
- The authorities should ensure that all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism are implemented.
- Jersey should consider requesting extension of the remaining 10 international counter-terrorism related legal instruments.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none"> • Ratification of the Palermo Convention has not yet been extended to Jersey. • Not all provisions of the Palermo and Vienna Conventions are fully implemented.
SR.I	LC	<ul style="list-style-type: none"> • Not all provisions of the FT Conventions are fully implemented. • Not all requirements under UNSCR 1267 and 1373 are fully implemented.

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

Legal Framework:

821. Jersey has not entered into any bilateral or multilateral MLA treaties. However, the U.K.’s ratification of the 1959 European Convention on Mutual Legal Assistance in Criminal Matters with Additional Protocol of March 1978 has been extended to include Jersey. Furthermore, the U.K.’s ratification of the Vienna Convention and the Suppression of the Financing of Terrorism Convention has been extended to Jersey, both of which include components relating to MLA. Where a request is

made based on one of these Conventions, domestic law gives the Jersey AG discretion in providing MLA.

822. While Jersey has requested extension of the U.K.'s ratification of the 1990 Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, extension had not been granted at the time of the assessment.

823. Jersey provides a wide range of mutual legal assistance based on the principle of reciprocity, whereby there is an assumption of reciprocity when requests are first received and this assumption applies unless and until experience suggests otherwise. The AG is the designated authority to receive and deal with mutual legal assistance requests. The U.K. Central Authority for Mutual Legal Assistance is generally not involved in the process.

824. There is no overarching legislation regulating the mutual legal assistance (MLA) practice of Jersey. The relevant pieces of legislation containing provisions dealing with mutual legal assistance include the Criminal Justice (International Co-operation) (Jersey) Law 2001 (CJ(IC)LJ), the Investigation of Fraud (Jersey) Law 1991, the Evidence (Proceedings in Other Jurisdictions)(Jersey) Order 1983, the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008, and the Drug Trafficking Offences (Enforcement of Confiscation Orders)(Jersey) Regulations 2008.

825. In addition, Jersey (through a letter of entrustment issued by the U.K. to Jersey, enabling Jersey to enter into these agreements directly with sovereign countries) has entered into bilateral tax information exchange agreements with the United States (2002) the Netherlands (2007), and Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, Sweden, and Germany (2008). At the time of the assessment mission, five additional bilateral tax information exchange agreements were being finalized (the U.K., France, Ireland, Australia, and New Zealand). Although criminal tax requests by treaty countries are to be dealt with in accordance with the agreements, the Island's authorities have not insisted for many years upon a treaty base for the purposes of giving effect to requests for information in criminal tax cases.

Widest Possible Range of Mutual Assistance (c. 36.1):

826. The authorities stated that the law most frequently used to render mutual legal assistance is the Criminal Justice (International Co-operation) (Jersey) Law 2001. The Criminal Justice (International Co-operation) (Jersey) Law 2001 applies to all offenses for which the maximum sentence in Jersey is not less than one year's imprisonment ("serious offenses") and therefore applies to all money laundering offenses, regardless of the predicate offense, as well as to terrorism financing offenses.

827. In addition, the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008, the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008, and the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 contain specific provisions dealing with the seizing of property upon request by a foreign jurisdiction to secure funds or property that is or may become subject to foreign confiscation orders.

828. Whereas the scope of the Drug Trafficking Offences (Enforcement of Confiscation orders) (Jersey) Regulations 2008 is limited to drug trafficking offenses, including drug-related money

laundering cases based on Article 38 of the DTOL, the Criminal Justice (International Co-operation) (Jersey) Law 2001 extends to all other criminal offense not covered by the DTOL and sanctioned with imprisonment of one year or more.

829. In addition to the laws indicated above, Jersey may provide MLA based on the Investigation of Fraud (Jersey) Law 1991 if the case for which assistance has been requested involves fraud related money laundering.

Production, search and seizure of information, document or evidence:

830. The main provisions for the production, search, and seizure of information, documents or other evidence for the purposes of providing mutual legal assistance in criminal matters are contained in Articles 5 and 6 Criminal Justice (International Co-operation) (Jersey) Law 2001. In addition, Article 2 of the Investigation of Fraud (Jersey) Law 1991 may be used by the Jersey authorities to obtain evidence, information or documents relating to a criminal case in a foreign jurisdiction.

831. Article 5 Criminal Justice (International Co-operation) (Jersey) Law 2001 specifies that upon receipt of a request for mutual legal assistance, the AG may issue a notice in writing to any person requiring the person (1) to attend and give evidence in proceedings before the court or the Viscount in relation to the request, (2) to provide to the AG, the court or the Viscount any documents, or other articles as specified in the notice and/or (3) to attend and give evidence in proceedings before the court or the Viscount in relation to the evidence produced. Pursuant to Article 5(9) and (1), the provision also allows for the production of documents or evidence otherwise covered by banking confidentiality.

832. Failure to comply with the requirement specified in the AG's notice constitutes an offense pursuant to Article 4 Criminal Justice (International Cooperation)(Jersey) Law 2001. Article 5A Criminal Justice (International Co-operation) (Jersey) Law 2001, however, provides that a person cannot be compelled to give evidence in relation to a foreign request if he/she could not be compelled to give this evidence in criminal proceedings in Jersey or in the requesting jurisdiction. A person's claim to have a right to exemption pursuant to Article 5A has to be confirmed by the requesting prosecution, court, tribunal, or authority.

833. The measures pursuant to Article 5 Criminal Justice (International Co-operation) (Jersey) Law 2001 may only be taken if (1) the request is made by a prosecuting authority, an authority which appears to be authorized to make such a request, or by a court or tribunal exercising criminal jurisdiction in a country or jurisdiction outside of Jersey and (2) the AG is satisfied that an offense under the law of the requesting country has been committed or there are reasonable grounds to believe that such an offense has been committed and that criminal proceedings or a criminal investigation have been instituted in the requesting jurisdiction with respect to that offense. Dual criminality is therefore not required in the context of Article 5.

834. Article 6 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 further provides for coercive measures based on a warrant by the Bailiff issued upon request by the AG. The order may allow for (1) the search of premises for the purpose of discovering evidence and (2) the seizure of any evidence found on the searched premises.

835. A warrant pursuant to Article 6 Criminal Justice (International Cooperation) (Jersey) Law 2001 may only be issued by the Bailiff if he is satisfied (1) that criminal proceedings have been instituted or an arrest been made in the course of a criminal investigation in the requesting country or that there are reasonable grounds to believe that proceedings will be instituted or an arrest be made in the course of a criminal investigation in the requesting country (2) that the conduct in question would constitute a “serious offense” had it been committed in Jersey and (3) that there are reasonable grounds to suspect that there is evidence on premises in Jersey relating to the offense. Any evidence seized by the Police pursuant to such a warrant has to be furnished to the AG for transmission to the requesting country. In comparison to Article 5, coercive measures pursuant to Article 6 may therefore only be taken based on dual criminality.

836. Article 2 Investigation of Fraud (Jersey) Law 1991 provides that the AG has the discretion to exercise his powers under the law where there is a suspected offense, wherever committed, involving ‘serious or complex fraud’. As the provisions of the law extend to criminal activity both in and outside of Jersey, they can be directly applied to international requests for assistance.

837. While the term “fraud” is not defined in the law, in *Foster vs. Attorney General* the Jersey Court of Appeal held that the term is to be interpreted broadly to extend to “any deliberate false representation with the intention and consequence of causing thereby actual prejudice to someone and actual benefit to himself or another”. The authorities stated that due to the broad interpretation by the court, the term would cover a wide range of criminal conduct producing illegal proceeds, and that in practice the provisions of the law have been used to provide MLA in fraud-related money laundering cases.

838. Pursuant to the Article 2 Investigation of Fraud (Jersey) Law 1991, the AG has the power to issue a notice (1) requiring the person under investigation or any other person to answer questions or otherwise furnish information relevant to the investigation and/or (2) requiring the production of any documents which appear to the AG to relate to the matter under investigation as well as to (3) take copies of such documents or request the person producing them to furnish an explanation of the documents.

839. In cases where a person fails to comply with the requirements and obligations provided for in the notice, or where it is not practicable for the AG to serve a notice, or where a notice would seriously prejudice the investigation, Article 2 also provides for the AG to apply to the Bailiff for a warrant to enter and search premises and to seize relevant documents.

840. In addition to the measures outlined above, in cases that are already at the trial stage in the requesting country Article 2(2) Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983 provides that the AG may apply to the Royal Court on behalf of the requesting country for an order for the production of documents in Jersey.

Taking of evidence or statements from persons:

841. As indicated above, pursuant to Article 5 of the Criminal Justice (International Cooperation) (Jersey) Law 2001 the AG may require any person or witness to appear before the authority specified in the notice and to provide a voluntary witness statement or to provide testimony in relation to evidence produced. If a person to whom a notice has been given pursuant to Article 5 or any other

witness does not comply with the AG's request, the court or the Viscount may secure the attendance of that person through coercive measures.

842. Furthermore, pursuant to Article 2 of the Investigation of Fraud (Jersey) Law 1991 outlined above, the AG may require a person under investigation or any other person to answer questions or to furnish information relevant to the investigation or to evidence produced by that person.

843. In cases where the case is already at the trial stage in the requesting country, Article 2(2) Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983 further provides that the AG, on behalf of the requesting country, may apply to the Royal Court for an order for examination of witnesses, either orally or in writing.

Providing originals or copies of relevant documents and records as well as any other information and evidentiary items:

844. Article 5B Criminal Justice (International Co-operation) (Jersey) Law 2001 provides that evidence received by the court or the Viscount has to be forwarded to the AG for transmission to the court, tribunal or other authority which made the request. The provision further specifies that AG may transmit to the requesting country any evidence provided to him based on the request, including the original document or evidence or a copy, picture, description or other representation thereof, as may be necessary to comply with the request.

845. In addition, pursuant to Article 3 of the Investigation of Fraud (Jersey) Law 1991, evidence or documents obtained by the AG may be provided to the requesting authorities for the purposes of any investigation or prosecution of a complex or serious fraud offense, including money laundering.

Effecting service of judicial documents:

846. Article 2 Criminal Justice (International Co-operation) (Jersey) Law 2001 provides that the AG may cause (1) a summons or other process requiring a person to appear as a defendant or witness in criminal proceedings in the requesting jurisdiction and (2) any document issued by and recording the decision of a court exercising criminal jurisdiction in the requesting country to be served in Jersey. Serving any of the mentioned documents would not, however, create a legal obligation under Jersey law to comply with it.

Voluntary Appearances

847. Facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country does not require any specific legal provision, but is a normal form of assistance based on the general practice of the AG.

848. As for identifying freezing, seizing and confiscation of ML and TF related assets and instrumentalities see comments under Recommendation 38.

849. With the exceptions outlined under Recommendation 38, Jersey seems to be able to provide a wide range of mutual legal assistance in AML/CFT investigations, prosecutions, and related proceedings.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

850. There are no formal time requirements in place when dealing with mutual legal assistance requests. In the guidelines issued to the public and posted on Jersey's government homepage (<http://www.gov.je/LawOfficers>) it is stated that requests would generally be dealt with within three months from receipt thereof. Between 2003 and 2007, the average timeframe for dealing with mutual legal assistance requests was 2.8 months.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

851. All assistance provided by Jersey is within the discretion of the AG. While there are no binding guidelines on grounds for refusal of MLA requests, in practice Jersey's MLA policy seems rather flexible and grounds for refusal seem to be few. Upon receipt, each request is considered by the Law Officers' Department on its merit with a view to determining whether the request is proportional and "reasonably serious." The AG explained that the "reasonably serious" standard would not, for example, allow for the implementation of confiscation orders that are "marginal" in terms of the property involved or assist in cases that clearly constitute "fishing expeditions" and would not relate to a specific offense. As a matter of policy, Jersey would therefore not provide assistance in cases where Jersey itself would not request the help of another country in the same circumstances on grounds of costs and/or seriousness. Furthermore, the authorities would be hesitant to provide assistance in cases involving less than GBP 100,000 (or equivalent) or, in the case of serious or complex fraud, less than GBP 2 million (or equivalent). However, the authorities stated that this policy would not exclude the provision of MLA based on public policy grounds in cases where the threshold is not met. For example, Jersey has previously granted assistance in cases involving less than 50,000 GBP due to the fact that the cases related to the preservation of the democratic process in the requesting country.

852. As outlined above, all forms of mutual legal assistance provided by Jersey are based on the principle of reciprocity. In addition, certain measures, namely coercive measures of search and seizure pursuant to Article 6 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 and any measures taken pursuant to Article 2 Investigation of Fraud (Jersey) Law 2001 as outlined above, may only be taken based on dual criminality. Any forms of mutual legal assistance pursuant to Article 5 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 may be granted even in the absence of instituted criminal proceedings or a conviction.

853. In cases where a request relates to an offense of a political character, the AG would get in contact with the U.K. Foreign Office to obtain further background information. The AG stated that in about five cases, mutual legal assistance was denied based on the political nature of the offense involved. Considerations would also be given to human rights and the nature of the trial process in the requesting country before a request is granted.

854. Overall, Jersey's law does not unduly or unreasonably restrict the provision of mutual legal assistance.

Efficiency of Processes (c. 36.3):

855. The Criminal Justice (International Co-operation) (Amendment) (Jersey) Law 2008 makes the AG the focal point for all mutual legal assistance related matters. All evidence received by the Royal Court or the Viscount shall be provided to the AG for transmission to the requesting court or authority.

856. While there are no formal procedures in place dealing with mutual legal assistance requests, the practice is that requests received by the AG would be handled by an Assistant Legal Adviser, who would then report to and obtain advice from a Crown Advocate on how to proceed with the specific request. Eventually, the matter would be taken before the AG, who would approve the proposed course of action, issue the relevant notices for implementation, and finally authorize the transmission of the information or evidence obtained to the requesting country

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

857. The fact that the request may contain fiscal aspects does not constitute grounds for refusal. Mutual legal assistance requests relating to fiscal offenses would most likely be dealt with under the Investigation of Fraud (Jersey) Law 1991. Between 2003 and 2007, Jersey has granted mutual legal assistance in 42 cases relating exclusively to fiscal offenses.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

858. Article 5(10) of the Criminal Justice (International Co-operation) (Jersey) Law 2001 provides that Article 6 of the Bankers' Books Evidence (Jersey) Law 1986, which grants access to otherwise confidential information and documents based on a court order, also applies to information and evidence provided to the AG for purposes of mutual legal assistance. Provided the general requirements of Article 5 are met, the AG may therefore issue a notice requiring the production of information and documents covered by banking confidentiality.

859. With respect to mutual legal assistance provided pursuant to the Investigation of Fraud (Jersey) Law 1991, Article 2(9) provides that the AG may require disclosure of information covered by banking confidentiality.

860. Neither the provisions of the Criminal Justice (International Co-operation) (Jersey) Law 2001 nor those of the Investigation of Fraud (Jersey) Law 1991 allow for the compelled production of documents or evidence covered by legal professional privilege, unless there is a suspicion that the lawyer himself committed a criminal offense.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

861. Pursuant to Articles 5 and 6 Criminal Justice (International Co-operation) (Jersey) Law 2001 the competent authorities in Jersey are able to obtain a production order through a notice by the AG or an order to search premises or seize documents based on a warrant by the Royal Court upon request by the AG. Such powers are also available under the POCL, the DTOL, and the TL.

Avoiding Conflicts of Jurisdiction (c. 36.7):

862. There are no formal proceedings in place dealing with conflicts of jurisdiction. However, the authorities stated that in practice they would deal with this issue on a case by case basis. In the past, Jersey coordinated, amongst others, with the Governments of the United Kingdom, the United States, and Nigeria to determine the best venue for prosecution.

Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

863. There is no direct requesting process between the JFCU and its foreign counterparts or other law enforcement authorities. All requests for mutual legal assistance (to secure information for evidential purposes) have to go through the Law Officers' Department.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):

864. The provisions of the Criminal Justice (International Co-operation) (Jersey) Law 2001 and the Criminal Justice (International Cooperation)(Jersey) Regulations 2008 apply to all conduct outside of Jersey that would constitute a "serious offense" had it been committed in Jersey. "Serious offense" is defined as an offense for which the maximum sentence under Jersey law is not less than one year's imprisonment. The range of mutual legal assistance that may be provided pursuant to these two legal instruments, therefore, also extend to requests relating to terrorism financing offenses.

Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):

865. There are no formal proceedings in place dealing with conflicts of jurisdiction, nor has any such difficulty presented itself in practice. This issue is normally dealt with on a case-by-case basis depending upon the circumstances and primarily the jurisdiction where a prosecution is most likely to succeed.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

866. Many forms of mutual legal assistance, including the taking of witness statements and the production of documents and other evidence pursuant to Article 5 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 are available without any proof that dual criminality is met. Furthermore, the powers under Article 2(2) of the Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983 relating to the production of evidence and documents and the examination of witnesses in cases that are already at the trial level in the requesting jurisdiction may be invoked even in the absence of dual criminality.

867. However, dual criminality is necessary to take search and seizing measures provided for in Article 6 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 and for seizing and confiscation measures pursuant to the POCL as amended by Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 or the DTOL as amended by Drug Trafficking (Enforcement of Confiscation Orders) (Jersey) Regulations 2008. Equally, conduct has to constitute "serious fraud" in accordance with Jersey law for the provisions of the Investigation of Fraud (Jersey) Law 1991 to be applicable to a mutual legal assistance request.

868. The authorities confirmed that for those forms of MLA where dual criminality is required, mere technical differences between the law of the requesting state and Jersey law do not pose an impediment to the provision of MLA.

International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):

869. See under Recommendation 37 above.

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1) and Property of Corresponding Value (c. 38.2): Identification of Property:

870. As outlined above, measures including the production of evidence and documents and search and seizing warrants pursuant to Articles 5 and 6 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 and Article 2 of the Investigation of Fraud (Jersey) Law 1991 may be used to identify and trace property that may become subject to confiscation through a foreign court proceeding. The measures also allow for access to information otherwise covered by banking confidentiality.

Enforcement of Foreign Freezing or Restraining Orders in Jersey:

871. The authorities stated that foreign seizing or freezing orders could not be implemented directly in Jersey but would be implemented in Jersey through domestic restraint or seizing orders as outlined below.

Domestic Seizing Orders Based on a Request by a Foreign Jurisdiction to Freeze or Seize Property:

872. Jersey law does not provide for any freezing measures. All requests to freeze or seize assets may therefore be implemented only through issuance (1) of a domestic seizing order or (2) a domestic restraint order. While the former measures may be taken with respect to property that is or may become subject to a foreign confiscation order the latter is applicable with respect to property that is or may become subject to an external (civil) forfeiture order. As outlined below, the two measures vary in the categories of offenses as well as the types of property that they may be applied to.

873. Domestic seizing orders may be issued upon request by a foreign jurisdiction pursuant to the POCL as amended by Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 or pursuant to Articles 15 and 16 DTOL as amended by Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008. The legal basis for the issuance of domestic restraint orders in the context of MLA is the Criminal Justice (International Co-operation) (Jersey) Law 2001. The authorities stated that either law may be used to provide mutual legal assistance related to the identification, freezing, seizure or confiscation of property.

Seizing orders pursuant to the POCL, the DTOL and the Enforcement Regulations:

874. The AG may apply for issuance of seizing order (*saisie judiciaire*) on behalf of a requesting jurisdiction to the Royal Court pursuant to Articles 15 and 16 of the POCL as amended by Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 or pursuant to Articles 15 and 16 DTOL as amended by Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008. For the Royal Court to grant the AG's request, the Court has to be

satisfied that proceedings have been instituted or are to be instituted against the defendant in the requesting country and have resulted in an external confiscation order or it appears to the Jersey court that there are reasonable grounds for believing that such an order may be made in the proceedings. An application for a seizing order may be made either *ex parte* or with notice.

875. Both Regulations provide for the seizing order to extend to any “realizable property” which is defined to include any property specified in the external confiscation order or, where such an order has not yet been made, to any property held by the defendant, by a person to whom the defendant has directly or indirectly made a gift caught or to any property to which the defendant is beneficially entitled. “Confiscation order” is defined in the enforcement regulations to the DTOL as “an order made by a court [outside of Jersey] for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value.” The enforcement regulations pursuant to the POCL define the term as “an order [...] for the purpose of recovering property obtained as a result of or in connection with criminal conduct or for the purpose of recovering the value of property so obtained or for the purpose of depriving a person of a pecuniary advantage so obtained.”

876. The scope of the provisions therefore seem to extend to the money laundered as well as to any proceeds from, instrumentalities used or intended to be used in the commission of the money laundering or predicate offenses covered by the POCL, the DTOL and the enforcement regulations. Based on the definitions of “confiscation” and “realizable property” as indicated above, the provisions also seem to allow for the seizing of legitimate assets equivalent to the value of illegitimate property or instrumentalities. This was confirmed by the authorities.

Restraint Orders pursuant to the Criminal Justice (International Co-operation (Jersey) Regulations 2008:

877. Regulation 3 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 provides for the Royal Court to issue restraint orders with respect to property that has been or may become subject to an external forfeiture order. In cases where proceedings have not yet been instituted in the foreign jurisdiction, a restraint order may still be issued if it appears to the Royal Court that proceedings will be instituted against the defendant in the requesting jurisdiction and that there are reasonable grounds to believe that an external forfeiture order may be issued in the course of such proceedings.

878. “Forfeiture Order” is defined through Regulation 2 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 as “an order [...] for the forfeiture and destruction or forfeiture and other disposal of anything in respect of which a serious offense has been committed or which was used or intended for use in connection with the commission of such an offense.”

879. The Criminal Justice (International Co-operation) (Jersey) Law 2001 and the Criminal Justice (International Co-operation) (Jersey) Regulations 2008 apply to all “serious offenses” and therefore cover all acts of money laundering, regardless of the underlying predicate offense, all terrorism financing offenses as well as all categories of predicate offenses.

880. Regulation 3 of the Criminal Justice (International Co-operation) (Jersey) Regulations 2008 provides that any property that may become subject to an external forfeiture may be seized and detained. Therefore, the provision allows for the restraint of proceeds of any predicate offense, as

well as instrumentalities used or intended for use in the commission of any predicate, terrorism financing, or money laundering offense. In stand-alone money laundering cases, the definition would also extend to any property laundered.

881. However, as the language of Regulation 3 only refers to “instrumentalities and property in respect to which a serious offense has been committed,” it appears that the provision only applies to illegitimate property and does not allow for the restraining of property of legitimate sources equivalent to the value of the illegitimate property or the instrumentalities. This was also confirmed in discussions with the authorities.

882. Equally, the language of the definition does not seem to cover benefits or property received from an offense but only to “property in respect of which a serious offense has been committed.” Therefore, for example in situations where a third party laundered received a fee for his services, the proceeds of the money laundering offense itself could not be restrained pursuant to Regulation 3 of the Criminal Justice (International Co-operation) (Jersey) Regulations 2008. This interpretation was also confirmed in discussions with the authorities.

883. To conclude, with respect to predicate offenses and ML cases falling under the scope of the POCL, and drug-related money laundering pursuant to Article 38 DTOL, Jersey may seize any property that may become subject to confiscation upon request by a foreign jurisdiction, including proceeds from the offenses, instrumentalities used or intended to be used for the commission of such crimes, as well as legitimate property equivalent in value to any such property.

884. In situations where property cannot be seized pursuant to the POCL as amended by Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulation 2008 and the DTOL as amended by Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008, as a specific case may not fall under the scope of the provisions, countries would still have the option to seek the application of restraint measures to secure the proceeds of the predicate offense or instrumentalities used or intended to be used in the commission of such a crime. It is worth noting that countries that do not recognize the concept of “civil forfeiture” may still utilize the measures set out in the Criminal Justice (International Co-operation) (Jersey) Regulations 2008 on the basis of a confiscation order or in proceedings that are assumed to result in the issuance of a confiscation order.

Confiscation:

885. There are two legal provisions allowing the enforcement of foreign confiscation orders in Jersey, namely the POCL, as amended by the Proceeds of Crime (Enforcement of Confiscation Orders)(Jersey) Regulations 2008, and the DTOL, as amended by Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008.

886. As outlined below, the two measures vary in the categories of offenses as well as the types of property that they may be applied to. Foreign confiscation orders may not be directly implemented in Jersey but are registered and subsequently implemented through domestic *saisie judiciaire* or a restraint order pursuant to the Criminal Justice (International Co-operation) (Jersey) Law 2001, as the case may be.

887. Furthermore, the Criminal Justice (International Co-operation) (Jersey) Law 2001 allows for the registration and implementation of forfeiture orders with respect to all serious offenses, including any ML, TF and predicate offenses to ML. In addition, the TL as amended by the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 makes specific provisions with respect to the registration and implementation of external (criminal or civil) forfeiture orders relating to “terrorist property”.

External Confiscation Orders:

888. With respect to external confiscation orders relating to money laundering cases based on the POCL, the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 defines “external confiscation order” to extend to “any property obtained as a result of or in connection with criminal conduct, for the purposes of recovering the equivalent value of such property or for the purpose of depriving a person of a pecuniary advantage.”

889. With respect to external confiscation orders relating to money laundering cases based on the DTOL, the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 defines “external confiscation order” to include “payments and other rewards received in connection with drug trafficking, or their value”, whereby pursuant to Regulation 2, “drug trafficking” would include the acts of “acquisition, possession, and use” but not the acts of “concealing or transferring” of drug-related proceeds.

890. Once an external confiscation order has been registered, the court may issue a *saisie judiciaire* and, upon application of the AG, empower the Viscount to realize the seized property to satisfy the external confiscation order and to subsequently pay the confiscated assets into the Criminal Offenses Confiscation Fund or the Drug Trafficking Confiscation Fund, as the case may be.

External (Civil) Forfeiture Orders:

891. Article 7 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 and Regulation 2 in connection with Regulation 5 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 provide for the registration of final external forfeiture orders with the Royal Court.

892. Where an external forfeiture order has been registered, Regulation 6 provides that the Royal Court may, upon application by the AG, order the forfeiture of the property specified in the external order through the issuance of a restraint order. The types of assets that may become subject to an external forfeiture order are discussed in great detail above.

893. For terrorism financing offenses and terrorism-related money laundering, the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 also contains specific provisions dealing with the implementation and enforcement of external (civil) forfeiture orders. “External forfeiture order” is defined in the TL to extend to “terrorist property” as defined in Article 3 of the TL and therefore extends to “property which is likely to be used for terrorism and to proceeds of the commission of acts of terrorism or of acts carried on for the purpose of terrorism.” The provisions therefore do not apply to terrorism financing offenses or terrorism related money laundering. The provisions could be used, however, to seize assets constituting the proceeds of a terrorism predicate

offense as well as instrumentalities used in or intended for use in the commission of a terrorism predicate offense.

894. To conclude, foreign confiscation orders for proceeds from, instrumentalities used or intended to be used in the commission of the money laundering or predicate offense within the scope of the POCL as amended by the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 and the DTOL as amended by Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 may be enforced in Jersey through issuance of seizing orders. Based on the definition of “confiscation order” as contained in the two orders, the provisions also seem to allow for the seizing of legitimate assets equivalent to the value of illegitimate property or instrumentalities. This was confirmed by the authorities.

895. In addition, the foreign jurisdiction may seek to have Jersey secure property through implementation of a civil forfeiture order. As outlined above foreign forfeiture orders may not be implemented towards legitimate property of equivalent value to the illegitimate property or instrumentalities. Proceeds from the money laundering or terrorism financing offense seem to be excluded from the scope of the provisions as well. Countries that do not recognize the concept of “civil forfeiture” may still utilize the measures set out in the Criminal Justice (International Co-operation) (Jersey) Regulations 2008 on the basis of a confiscation order or in proceedings that are assumed to result in the issuance of a confiscation order.

Coordination of Seizure and Confiscation Actions (c. 38.3):

896. No formal procedures are in place to coordinate seizure and confiscation actions with other countries. However, Jersey has in the past cooperated and liaised with other countries in relation to such actions on a case-by-case basis.

International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):

897. The Criminal Justice (International Co-operation) (Jersey) Law 2001 and Regulations 2008 apply to all conduct outside of Jersey that would constitute a “serious offense” had it been committed in Jersey. “Serious offense” is defined as an offense for which the maximum sentence under Jersey law is not less than one year’s imprisonment. The relevant provisions dealing with enforcement of external confiscation orders therefore also apply with respect to terrorist financing offenses.

Asset Forfeiture Fund (c. 38.4):

898. Jersey has established three asset forfeiture funds, namely the Drug Trafficking Confiscation Funds, the Criminal Offenses Confiscation Funds, and the Civil Asset Recovery Fund. With respect to the first two funds, all amounts recovered under or in satisfaction of confiscation orders or received under asset-sharing arrangements are to be paid into those funds, and the money paid into the funds shall be used to assist in preventing, suppressing, or otherwise dealing with criminal conduct, with the consequences of criminal conduct, or in facilitating the enforcement of any enactment dealing with criminal conduct.

Sharing of Confiscated Assets (c. 38.5):

899. There are no formal procedures in place dealing with the sharing of confiscated assets. However, the authorities stated that Jersey considers asset sharing to be good practice and that arrangements have been made on a case-by-case basis in the past—for example with the US, the UK, and South Africa.

900. There are various requests to share assets in the course of discussion with the U.S., with the U.K., with Spain, and with Andorra. These have not been considered to date as suitable for asset sharing agreements because there has been an intention not to create international obligations on the part of the U.K. in this area, but that policy is being reconsidered.

Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

901. The Civil Asset Recovery (International Co-operation) (Jersey) Law 2007 provides for a wide range of mutual legal assistance in civil proceedings, including the obtaining of evidence and the enforcement of foreign restraint and civil asset recovery orders.

Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):

902. Asset forfeited in terrorism financing cases have to be handed over to the Viscount. There have been no cases in which Jersey has shared assets relating to terrorism funding with another jurisdiction. The authorities stated that it was open to the Minister for Treasury and Resources to share at his discretion if he thought fit. An amendment to the TL now ensures that, where a forfeiture order is made under Article 26, the balance of any sums in the hands of the Viscount is paid into the Criminal Offences Confiscation Fund, from which asset sharing is possible pursuant to the terms of the POCL.

Statistics (applying R.32):

903. Between 2003 and 2008, Jersey has received a total of 557 requests for mutual legal assistance in criminal matters, most of them related to cases of fraud. Other 557 requests, 63 related to money laundering, most of them involving fraud or drug related predicate offenses. Between 2003 and 2008, five requests for assistance in terrorism cases were received (four from the U.S., one from the U.K.), all of which have been granted.

904. The majority of requests were for the production of oral or documentary evidence. Only 17 requests related to the freezing or seizing of funds and 12 requests related to the registration of external confiscation orders.

905. Of the 557 requests received, only 25 (which is about 4.49 percent) were denied compared to 395 granted requests. The average timeframe within which mutual legal assistance requests are handled is 2.68 months. The majority of MLA requests related to fraud offenses, followed by fiscal, theft, drug trafficking, and corruption offenses.

TOTAL NUMBER OF REQUESTS FOR MLA RECEIVED BY JERSEY

	2003	2004	2005	2006	2007	2008
NEW REQUESTS RECEIVED	104	101	107	77	77	91
REQUESTS GRANTED	79	97	76	42	42	59
REQUESTS UNDER REVIEW	27	24	25	32	33	26
REQUESTS REFUSED	8	6	2	3	2	4
AVERAGE TIME WITHIN WHICH ASSISTANCE WAS GRANTED (IN MONTHS)	2.6	3.1	3.2	2.6	2.8	2

UNDERLYING OFFENSES FOR REQUESTS RECEIVED

	2003	2004	2005	2006	2007	2008	TOTAL
ML	11	10	10	8	12	12	63
Terrorism	2	1	1	0	1	0	5
Pure Fiscal Offenses	16	12	15	9	10	7	69
Fraud	40	35	34	31	31	39	210
Theft/Deception	11	6	6	13	12	6	54
Corruption	4	1	3	6	6	13	33
Drug Trafficking	2	3	7	6	9	10	37

6.3.2. Recommendations and Comments

- Amend the law to correct the deficiencies affecting the criminalization of ML and FT offenses, and thus facilitate full compliance with MLA requests where the dual criminality principle applies.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	<ul style="list-style-type: none"> • Deficiencies in the ML criminalization affect the MLA capacity where the dual criminality principle applies.
R.37	C	
R.38	LC	<ul style="list-style-type: none"> • Deficiencies in the ML criminalization affect the MLA capacity where the dual criminality principle applies.
SR.V	LC	<ul style="list-style-type: none"> • Deficiencies in the FT criminalization affect the MLA capacity where the dual criminality principle applies.

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework:

906. Jersey's extradition framework is governed primarily by the Extradition (Jersey) Law 2004, which is modeled on the Extradition Act 2002 of the U.K. The Extradition (Jersey) Law 2004 designates the AG as the competent authority to make and receive any extradition requests and sets out procedures to be followed in responding to such requests. Parts 1-3 of the Extradition (Jersey) Law 2004 deal with extraditions from Jersey and Part 4 with extraditions to Jersey. Involvement of the U.K. is not required at any stage of extradition proceedings, including those relating to U.K. citizens.

907. In addition, the bilateral Extradition treaty between the U.K. and the U.S. has been extended to Jersey. The Council of Europe Convention on Extradition 1957, which according to its Article 27(2) considers the Channel Islands to be included within the territorial application of the Convention to the U.K., also applies to Jersey.

908. The Extradition (Jersey) Law 2004 differentiates between "designated" and "non-designated" territories. "Designated" territories are further categorized in "class 1" and "class 2" countries. Some aspects of the extradition proceedings are different depending on what class a requesting country belongs to. "Category 1" countries mainly include countries in Europe as well as the U.S., Australia, New Zealand, South Africa, and a limited number of countries in Asia. "Category 2" countries mainly include countries in Asia, Africa, the Caribbean, and South America.

909. Article 6 of the Law provides that the Jersey Parliament, by way of Regulation, may add, change or remove any territory from the list. Privy Council approval is not required. The authorities indicated that it was relatively easy for countries to be added to the list and that the formal process could be concluded within ten weeks. At the time of the assessment visit, the list of designated countries extended to 112 and included countries from all parts of the world. The authorities stated that any members to a treaty relevant for extradition and extended by the U.K. to Jersey would automatically be added to the list of designated countries. The list of designated countries therefore seems to be quite comprehensive.

910. In cases where a non-designated country requests extradition from Jersey, Article 109 provides that the provisions of the Extradition (Jersey) Law 2004 may still apply if the Jersey AG believes that the U.K. has made arrangements, on behalf of Jersey, with the requesting country for the extradition of a person from Jersey. The authorities stated that if a request from a non-designated country was made, either directly to Jersey or through the U.K., discussions between Jersey and the U.K. would take place to determine the desirability of any such arrangements by Jersey. The authorities held that no arrangements pursuant to Article 109 Extradition (Jersey) Law 2004 could be made by the U.K. without Jersey's concurrence. For non-designated territories, extradition is therefore possible on an ad-hoc basis pursuant to Article 109 Extradition (Jersey) Law 2004.

911. Article 32 Extradition (Jersey) Law 2004 provides that the AG may grant extradition to designated countries only if the requesting country has special arrangements with Jersey for a particular case, for a particular class of cases or particular classes of cases, or in respect of all cases. All members to the Council of Europe Convention would automatically be considered to have a special arrangement. In addition, Jersey has extradition arrangements with the U.S.. In all other cases, Jersey may enter into an arrangement with a country after it has received a request for extradition.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

912. Articles 3 and 4 of the Extradition (Jersey) Law 2004 provide that for an offense to be extraditable under Jersey law, dual criminality is required in all cases whereby the conduct in question has to (1) constitute an offense under both Jersey law and the law of the requesting jurisdiction and (2) be punishable with imprisonment for a term of 12 months or more under both Jersey law and the law of the requesting jurisdiction. If the outlined requirements are met, the conduct constitutes an extraditable offense regardless of how the conduct is denominated or categorized in the requesting jurisdiction. In countries where there is no statutory penalty, the level of penalty that can be imposed for the commission of the offense shall be taken into account.

913. In any case, extradition requests may only be certified by the AG to be "valid" if the person has been either charged or convicted in the requesting jurisdiction for the offense specified in the extradition request and the requesting jurisdiction is listed in Schedule 1 of the Extradition (Jersey) Law 2004 or an ad-hoc request from a non-designated country meets the requirements of Article 109 Extradition (Jersey) Law 2004 as outlined above. Upon issuance by the AG of the "certificate of validity", the request is sent to the Magistrate for processing.

914. Based on the dual criminality requirement, the shortcomings of the money laundering and terrorism financing offenses as outlined in section 2 of this report may negatively impact Jersey's ability to grant extradition requests from other jurisdictions.

Money Laundering as Extraditable Offense (c. 39.1):

915. All money laundering offenses as defined in the POCL, the DTOL and the TL may be sanctioned with imprisonment of up to 14 years. Provided that the act or omission is a criminal offense punishable with imprisonment of more than 12 months under the law of the requesting country, money laundering is, therefore, an extraditable offense.

916. The Extradition (Jersey) Law 2004 provides for a detailed extradition process, including a hearing before the Magistrate and the right of a person or the requesting jurisdiction to appeal any decisions made by the Magistrate or the AG in the course of the extradition proceedings.

917. As a first step in the extradition hearing procedures, the AG ensures that a valid request is received. A request is valid if it contains a statement, indicating that the person is accused of the commission of an offense specified in the request or that the person is alleged to be unlawfully at large after conviction by a foreign court. Once validity of the request has been confirmed, the AG issues as certificate of validity and forwards both the certificate and the case to the Magistrate.

918. The Magistrate subsequently reviews the documents received and, if he/she has reasonable grounds to believe that the offense for which extradition is sought is an extraditable offense and that there is evidence that would justify the arrest of the person whose extradition is sought or of the person unlawfully at large after conviction of the offense, may issue a provisional arrest warrant.

919. Following the arrest, an extradition hearing will be conducted. In the course of the hearing, the Magistrate seeks to determine whether all relevant information and documents pertaining to a request have been received from the AG, including the certificate of validity of the request, the particulars of the person whose extradition is requested, particulars of the offense specified in the request and, where applicable, a warrant for the person's arrest issued in the requesting jurisdiction or a certificate of the conviction in the requesting jurisdiction. Where the documents and information is incomplete, the Magistrate shall order that the person in question is to be discharged. While there is no grace period for the requesting country to remedy any noncompliance with formal requirements, it is possible for the AG on behalf of the requesting country to appeal the Magistrate's decision. Pursuant to Article 44 Extradition (Jersey) Law 2004, if immediately after the Magistrate orders that a person be discharged the Magistrate is informed on behalf of the requesting country of an intention to appeal the decision, the Magistrate shall remand the person in custody or on bail while the appeal is pending. The provision therefore ensures that there is no risk of flight of the person for whom extradition is sought while the case is sent back to the requesting country to ensure that all formal requirements are met.

920. Once it has been established that a request meets the formal requirements, the Magistrate determines whether there are any bars to extradition, whether a person's extradition would be in line with the rights granted to individuals pursuant to certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, and that the person for whom extradition is sought is physically and mentally fit for extradition.

921. In addition, with respect to cases where a conviction has not yet been obtained and the extradition request is received from a country designated as "category 2" country, the Magistrate shall

decide whether there is sufficient evidence for the person to stand trial in the requesting country and, in making his decision, he may take into account any evidence provided from the requesting country.

922. If all these requirements are met, the Magistrate forwards a request to the AG to decide whether or not extradition is to be granted.

923. Once a request for a decision on a specific extradition request has been received by the AG, the AG shall make his decision based on the provisions relating to the death penalty as outlined in the next paragraph, on whether or not there is an extradition arrangement between Jersey and the requesting jurisdiction relevant to the case before him, and whether the person has been extradited to Jersey from another jurisdiction. Provided that none of the cited provisions prohibit extradition, the AG has to issue a written extradition order.

924. Bars to extradition, including for money laundering, are provided for in Article 16 Extradition (Jersey) Law 2004 and include double jeopardy; extraneous considerations such as purporting to make a request based on an offense when in fact the purpose of the prosecution is to punish the person in question on account of his race, religion, nationality, gender, sexual orientation, or political opinion; passage of time; and hostage-taking considerations. "Passage of time" may only be invoked if it appears that it would be unjust or oppressive to extradite a person due to the lapse of time since the extraditable offense was allegedly committed or since the person has become unlawfully at large. The authorities stated that this ground for refusal of extradition has never been invoked in practice. If extradition were to be denied based on "passage of time," the AG on behalf of the requesting country could appeal the court's decision.

925. In addition, Article 31 provides that the AG has to refuse extradition if the person to which the request pertains could, will be, or has been sentenced to death for the offense for which extradition has been sought, unless the requesting country provides written assurance that the death penalty will not be imposed or carried out.

926. Extradition is possible only in very limited circumstances if the person for whom extradition was sought has been extradited to Jersey by another jurisdiction. Equally, decisions with respect to extradition requests have to be deferred in cases where the person in question was charged with the offense in Jersey and may be deferred in cases where the person in question is serving a sentence of imprisonment in Jersey.

927. Jersey has posted a publicly accessible document on its government website, outlining in great detail all requirements to be met by requests for mutual legal assistance, including extradition. www.gov.je/NR/rdonlyres/60AED055-A862-4945-A812-160D1741BAFC/0/MLAGuidelines2008version23.pdf

Extradition of Nationals (c. 39.2):

928. Jersey may and in the past has extradited its own nationals (British citizens), albeit not in the context of money laundering.

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

929. Article 16 Extradition (Jersey) Law 2004 provides for a person to be discharged if the extradition is barred pursuant to the provision. There is no express provision in the law that would require that the person for whom the request was issued is prosecuted before Jersey courts. However, since Jersey may and has in the past extradited British citizens, these criteria do not apply.

Efficiency of Extradition Process (c. 39.4):

930. The Extradition (Jersey) Law 2004 does not provide for clear timeframes within which the extradition hearings have to be conducted. Once an extradition hearing has been conducted and a case has been forwarded by the Magistrate to the AG, the AG has two months to either grant a request or discharge the person for whom extradition has been sought. In the case of the former, Article 55 provides that extradition to the requesting territory has to take place within 28 days of the day on which the AG granted the extradition request.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

931. Simplified extradition procedures are provided for in Articles 62–64 Extradition (Jersey) Law 2004 and relate to situations in which the person for whom extradition is sought consents to be extradited.

Extradition Proceedings Related to Terrorist Acts and Financing of Terrorism (applying c 39.1.-39.4. in R. 39, c V.4):

932. Terrorism financing as defined in the TL may be sanctioned with imprisonment of up to 14 years and, provided the dual criminality requirement is met, is therefore an extraditable offense pursuant to Articles 3 and 4 of the Extradition (Jersey) Law 2004. All provisions and procedures of the Law as outlined under R 39 therefore also apply with respect to extradition requests for terrorism financing offenses.

Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)

933. Simplified extradition procedures are provided for in Articles 62–64 Extradition (Jersey) Law 2004 and relate to situations in which the person for whom extradition is sought consents to be extradited.

Effectiveness:

934. As of the time of the assessment visit, Jersey had not received or made any extradition requests involving money laundering or terrorism financing.

6.4.2. Recommendations and Comments

- Amend the law to correct the deficiencies affecting the criminalization of ML and FT offenses, and thus remove possible obstacles to complying with extradition requests where the dual criminality principle applies.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	LC	<ul style="list-style-type: none"> Deficiencies in the ML criminalization affect the extradition capacity due to the application of the dual criminality principle.
R.37	C	
SR.V	LC	<ul style="list-style-type: none"> Deficiencies in the ML criminalization affect the extradition capacity due to the application of the dual criminality principle.

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Widest Range of International Cooperation (c. 40.1)

JFCU

935. The JFCU provides international cooperation to foreign counterparts and estimates it shares intelligence on ten percent of SARs received, mostly with the U.K. and Crown Dependencies. The JFCU is active in the Egmont network of FIUs over the Egmont Secure Web. Information requests from counterpart FIUs are complied with to the greatest extent within the intelligence boundaries. The FIU to FIU cooperation is governed by the Egmont principles of information exchange ensuring that no further use of the information is made without the consent of the supplying FIU. The JFCU normally grants its consent for intelligence purposes.

Customs

936. Customs operates within the same legislation and guidelines as the JFCU with respect to providing SAR information to foreign counterparts. Further, Customs exchanges information with its counterparts practically on a daily basis. The operational cooperation with the U.K. counterpart is well developed and the service freely exchanges information with U.K. agencies. This exchange is in compliance with the Data Protection Law.

937. The Customs and Excise (Jersey) Law 1999 allows the Customs to cooperate with other Customs services on matters of mutual concern, and further allows for arrangements to be put in place with EU member states for the exchange of information to prevent and detect fraud and duty evasion against their customs laws.

938. Being part of the customs territory of the EU, Customs is able to co-operate with a large number of foreign countries in customs-related matters under mutual assistance agreements between those countries and the EU. Cooperation with countries outside the scope of these agreements is conducted on a case-by-case basis. Customs in partnership with the Police has bilateral links with the SOCA by way of a memorandum of understanding (MOU) relating to information sharing.

Police

939. The Police use the international communication networks of Interpol and Europol and further has bilateral links with the SOCA by way of an MOU relating to information sharing. Assistance to other police agencies takes place generally under the provision of Guidelines issued by the AG which relate to the sharing of intelligence only. Further assistance post exchange of intelligence is routinely provided through MLA requests, once the AG has granted his consent.

Supervisory Authorities

940. The JFSC is legally empowered to cooperate with regulators in other jurisdictions and does so in practice. Although information collected by the JFSC under the regulatory laws and the SBL is restricted information, it is able to share information that it holds (spontaneously or upon request) with (inter alia) an overseas supervisory authority, including any agency that has responsibility for oversight of compliance with AML/CFT requirements.

941. The JFSC's website (www.jerseyfsc.org) includes a statistical table of the number of times the JFSC has responded to overseas requests for information. There were 11 instances in 2008 and 18 in 2007.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):

942. All Police and FIU ML/FT-related requests are handled by the JFCU, more specifically by its Intelligence Wing. Requests are dealt with promptly in practice. No instances of undue delays have been signaled in the context of Police and Customs cooperation or in the case of the JFSC.

Clear and Effective Gateways for exchange of information (c. 40.2):

943. Disclosure of information by the JFCU to overseas agencies requires the consent of the AG. Information can be disclosed outside Jersey with the AG's consent generally, with reference to guidelines drawn up by the AG and amended from time to time, or, specifically on a case-by-case basis, for the purpose of the investigation of crime outside Jersey or of criminal proceedings outside Jersey, or to assist a competent authority outside Jersey.

944. When disseminated, the information is initially communicated on an intelligence use basis only by the receiver. The intelligence information may be forwarded after permission of the JFCU is obtained. If the information is to be used for evidentiary purposes, the overseas authority is required to request that information as part of an MLA process.

945. While the regulatory laws and SBL do not require bilateral agreements to be in place in order to cooperate internationally, the JFSC has concluded 35 bilateral memoranda of understanding and two letters of intent with overseas financial services regulators. In addition, Jersey was an early signatory to the IOSCO multilateral memorandum of understanding.

Spontaneous Exchange of Information (c. 40.3):

946. The JFCU has adopted a policy of informing the FIUs of the jurisdictions that are involved in a SAR, whether or not requested to do so. The frequency of such spontaneous dissemination of information to counterpart FIUs is at least 10 percent of all SARs received.

947. Customs provides for both spontaneous and upon-request provision and exchange of information on ML and predicate customs offenses through its officers seconded to the JFCU.

948. The JFSC is in a position to provide information spontaneously or upon request.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4): FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

949. Police and Customs officers in the JFCU are authorized by the Attorney Generals' Guidelines to make enquiries on behalf of foreign counterparts. The JFCU has three levels of making inquiries on behalf of foreign counterparts:

- Level One: involves searching JFCU data bases and disclosing intelligence in accordance with the Egmont principles of information sharing;
Level Two: involves a search of Jersey's Companies Register and other public domain information;
- Level Three: involves the JFCU informally approaching institutions to share information obtained on an intelligence basis only.

The JFSC is also in a position to assist with enquiries (as distinct from investigations).

950. If the material is to be used for evidentiary purposes, the enquiries can be conducted in response to a request for MLA once the AG has granted his consent.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):

951. The Police and JFCU routinely conduct investigations on behalf of foreign counterparts. However, this occurs as part of a formal MLA process rather than through an informal request.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):

952. The JFCU acts under the Egmont principles of information exchange, being the rule among all Egmont member FIUs. Information requests from other FIUs are considered on a case-by-case basis, but are usually complied with whenever the JFCU is satisfied that the normal conditions will be observed.

953. Disclosure of information by the JFCU to overseas agencies requires the consent of the AG. Information can be disclosed outside Jersey with the AG's consent generally, which is automatically given provided the request falls within the guidelines issued by the AG and amended from time to time, or, specifically on a case-by-case basis, for the purpose of the investigation of crime outside Jersey or for criminal proceedings outside Jersey, or to assist a competent authority outside Jersey. The guidelines issued by the AG are consistent with the Egmont principles of exchange.

954. In the case of information exchanged as part of an investigation, it is typically subject to the following conditions:

- The information is only to be used for criminal investigations or prosecutions.
- Information remains the property of the Jersey law enforcement agencies and is not subject to onward transmission to any third party without their consent.
- Where the information is intelligence, then an application should be made for mutual legal assistance if the information is needed for a formal investigation or prosecution.

955. Otherwise no special conditions apply, except for the normal confidentiality and the provisions of the Data Protection (Jersey) Law 2005.

956. Under Article 39 of the SBL (and also Article 47 of the BBJL, Article 25 of the CIFL, Article 33 of the IBJL, and Article 36 of the FSJL), the JFSC may not pass on information unless it is satisfied that:

- The relevant overseas authority will treat the information communicated with appropriate confidentiality;
- The information is being provided to assist the relevant supervisory authority in the exercise of its supervisory functions;
- The relevant overseas authority will comply with any conditions that the JFSC sees fit to apply to the disclosure.

957. In addition, in deciding whether to exchange information, the following factors may be taken into account by the JFSC:

- Whether corresponding assistance would be given;
- Whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
- The seriousness of the case and its importance in Jersey;
- Whether it is otherwise in the public interest to provide assistance.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):

958. Where a request might also relate to facts that also have fiscal ramifications, that is in itself not grounds for refusal. If, however, the request relates exclusively to pure tax offenses, the approach is more cautious, though not prohibitive. For Police cooperation it is important that the alleged facts can be translated into a criminal behavior recognized in Jersey law. Generally a taxation offense would fall under the Jersey common law fraud or false accounting offense and be acted upon accordingly.

959. In practice, these requests would be made by way of a request for MLA and be initially considered by the AG. Jersey has cooperated in the past with respect to providing assistance with respect to offshore taxation offense investigations and prosecutions.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

960. Provision of assistance depends if the request is done for evidentiary or for intelligence purposes. The use of coercive and invasive measures to collect evidence, particularly in the form of financial information and documents of a confidential nature, requires the AG to invoke his powers under the IOFL, CJ (IC)JL, Civil Asset Recovery (International Co-operation) (Jersey) Law 2007, or Regulation of Investigatory Powers (Jersey) Law 2005. All of these laws include provisions that override the common law duty of confidentiality. Such information can however also be shared in line with guidelines issued by the AG, without special formalities by means of an agency to agency request for intelligence purposes, which is mostly done in preparation for a formal MLA request. At JFCU level the exchange of information takes place as described above.

Safeguards in Use of Exchanged Information (c. 40.9):

961. Where information is shared by the JFCU under intelligence sharing guidelines or the Law Officers' Department as part of an MLA request, with competent authorities elsewhere, an undertaking is obtained to give effect, where relevant, to the confidentiality laws of Jersey.

962. Where the Jersey competent authorities become aware of any breach of undertaking, it would be customary practice to enquire how that breach has come about.

963. All relevant information, including requests for assistance and other information from foreign law enforcement sources, is stored either in the secured JFCU IFIS, to which the Police and Customs officers of the JFCU have access, or a secure system in the Law Officers' Department. Processing of data is covered by the Data Protection (Jersey) Law 2005, and there are special provisions dealing with processing of data for the purpose of the prevention and detection of crime.

964. Information supplied by counterpart FIUs is also registered in the JFCU IFIS database, but access to it is restricted to only the JFCU and in some cases the Police intelligence bureau. Moreover the Egmont rules imposing general confidentiality guarantees and prior consent conditions for the use of supplied information are observed.

International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5):

965. The direct cooperation regime between law enforcement authorities and FIUs applies equally in FT-related matters.

Analysis:

966. The JFCU, whether acting as an FIU or as an investigative body, maintains cooperative relationships with its counterparts. JFCU estimates it exchanges information in approximately 10 percent of its cases, with counterpart requests responded to in a constructive way.

967. Cooperation with other Egmont Group FIUs is actively conducted under the Egmont principles of information exchange providing for free exchange of information for analytical purposes and there are no refusals on record. The JFCU follows a policy of flexibility in responding to requests for the sharing of intelligence and consent to supply information for intelligence purposes is not refused. Requests aimed at collecting evidence, however, need to follow the appropriate MLA procedures.

968. The same constructive and effective approach to international cooperation is seen with Customs, where exchanges of information and other forms of mutual assistance are an inherent part of their assignment, are facilitated through the JFCU being jointly staffed by both equally authorized Police and Customs officers.

969. The statistics published by the JFSC indicate its constructive approach to international cooperation with its supervisory counterparts.

Statistics (applying R.32)

970. Statistics on international requests for intelligence and assistance and data provided for this recommendation is based on specific sampling. The JFCU introduced a statistical collection system which commenced on January 1, 2009. The JFSC website provides up-to-date statistics on bilateral agreements in place and on the numbers of occasions on which information exchange has occurred.

6.5.2. Recommendations and Comments

none

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	C	
SR.V	LC	

7. OTHER ISSUES

7.1. Resources and Statistics

971. Factors and composite ratings for Recommendations 30 and 32 are as follows. The relevant analysis and recommendations may be found at appropriate points throughout the report.

	Rating	Summary of factors underlying rating
R.30	LC	<ul style="list-style-type: none"> Additional resources needed for JFCU to deal with increasing workload
R.32	LC	<ul style="list-style-type: none"> The JFCU needs to develop its capacity to maintain relevant statistics on all aspects of SAR analysis and external cooperation.

7.2. Other relevant AML/CFT Measures or Issues

972. There are no additional matters to raise.

7.3. General Framework for AML/CFT System (see also section 1.1)

973. The general framework is addressed in Section 1 of the report. No issues were identified that warrant further analysis.

Table 1. Rating of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offense	LC	<ul style="list-style-type: none"> Articles 34 of the POCL and 30 of the DTOL are not sufficiently wide to fully meet the international standard due to the requirement that acts of “concealing or disguising” and “converting or transferring” are carried out with the purpose of avoiding prosecution for a predicate offense. The defense (payment of adequate consideration) provided for in Articles 33(2) of the POCL and 38(2) of the DTOL is not consistent with the Vienna and Palermo Conventions and may allow money launderers to abuse the provision to avoid criminal liability for the acquisition, possession, or use of criminal proceeds/proceeds Article 18 TL does not cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions. The offenses of acquisition, possession, or use of the POCL and DTOL as well as the money laundering offense contained in the TL do not extend to self-laundering.
2. ML offense—mental element and corporate liability	C	
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Deficiencies in ML and FT criminalization impact on the scope of criminal confiscation. Failure to provide for corresponding value seizure before proceedings are about to commence has some potential to limit overall effectiveness. No provisions to restrain, seize or confiscate property of corresponding value in the case of FT. The statutory backing for the current JFCU informal freezing or consent/nonconsent arrangement is not sufficiently direct.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> No comprehensive exclusion from common law duty of client confidentiality to permit financial institutions to exchange information for purposes of R.7 and R.9 (other than with relevant persons or within a group).
5. Customer due diligence	PC	<ul style="list-style-type: none"> Available concessions from conducting full CDD represent an overly-generous implementation of the FATF’s facility to apply reduced or simplified

		<p>measures for certain low-risk scenarios.</p> <ul style="list-style-type: none"> • Some concessions are available where the financial institution is not required to determine that the customer resides in a country that is in compliance with and has effectively implemented the FATF standards. • Some exceptions from conducting full CDD are not conditioned on the absence of specific higher risk scenarios. • Current list of high-risk customers in the MLO omits some significant high-risk business categories of relevance in Jersey. • Tighter implementation needed regarding timing of completion of CDD measures for existing customers.
6. Politically exposed persons	LC	<ul style="list-style-type: none"> • Implementation of latest requirements for PEPs not yet fully effective in some financial institutions.
7. Correspondent banking	C	
8. New technologies & non face-to-face business	LC	<ul style="list-style-type: none"> • Limited guidance on specific ML and FT risks of new technologies, including in relation to e-money and e-commerce.
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • No explicit requirement that a relevant person obtain certain CDD elements from intermediaries and introducers. • No provisions adequately addressing risk that intermediaries and introducers in secrecy jurisdictions may have barriers to providing CDD evidence. • Concession permitting reliance on certain categories of DNFBPs as intermediaries or introducers not appropriate until their AML/CFT requirements are fully implemented. • Concession permitting reliance, as intermediary or introducer, on branch or subsidiary group member not regulated and supervised in accordance with FATF recommendations is not consistent with Recommendation 9.
10. Record-keeping	C	
11. Unusual transactions	C	
12. DNFBP–R.5, 6, 8–11	PC	<ul style="list-style-type: none"> • Compliance weaknesses identified in some TCBs. • Testing of compliance by lawyers, accountants and estate agents only recently commenced. • Application to DNFBPs as appropriate of factors identified in section 3 for financial institutions.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • To enhance effectiveness, there appears to be scope to improve the timeliness of SAR reporting.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • The protection for SAR reporting is not limited to

		<p>good faith reporting.</p> <ul style="list-style-type: none"> • Tipping-off provision not fully consistent with international standard in being limited to situations that might prejudice an investigation
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> • There is no requirement in law, regulation, or other enforceable means expressly covering AML/CFT to maintain an adequately resourced and independent audit function (having regard to the size and nature of the business). • The current requirement for timely information access for compliance officers, though drafted in broad terms, is not sufficiently detailed.
16. DNFBP–R.13–15 & 21	PC	<ul style="list-style-type: none"> • Low level of STR reporting by those DNFBP sectors that until very recently were not subject to the MLO nor supervised for AML/CFT compliance. • Effective implementation by lawyers, accountants, and estate agents under new regulatory requirements has not been fully tested by the authorities.
17. Sanctions	LC	<ul style="list-style-type: none"> • The supervisory authority does not have the power to apply monetary fines among the range of available sanctions.
18. Shell banks	C	
19. Other forms of reporting	C	
20. Other NFBP & secure transaction techniques	C	
21. Special attention for higher risk countries	LC	<ul style="list-style-type: none"> • Power to use countermeasures restricted by its dependence on FATF actions.
22. Foreign branches & subsidiaries	LC	<ul style="list-style-type: none"> • No explicit requirement in law, regulation, or other enforceable means for particular attention to the need to apply AML/CFT measures at least equivalent to those in Jersey in the cases of branches or subsidiaries in countries that do not or insufficiently apply the FATF Recommendations.
23. Regulation, supervision and monitoring	C	
24. DNFBP—regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> • Requirements for certain DNFBPs are new and their implementation was incomplete at the time of the assessment
25. Guidelines & Feedback	C	
Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> • Resource constraints impacted on the effectiveness of the Intelligence Wing of the JFCU.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • The JFCU should be adequately staffed to perform its investigative function effectively.

28. Powers of competent authorities	C	
29. Supervisors	C	
30. Resources, integrity, and training	LC	<ul style="list-style-type: none"> • Additional resources needed for JFCU to deal with increasing workload
31. National co-operation	C	
32. Statistics	LC	<ul style="list-style-type: none"> • The JFCU needs to develop its capacity to maintain relevant statistics on all aspects of SAR analysis and external cooperation.
33. Legal persons–beneficial owners	C	
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> • While the vast majority of trust arrangements are covered by the CDD requirements of the MLO, no measures are in place to ensure that accurate, complete, and current beneficial ownership information is also available for legal arrangements administered by any trustees not covered by or exempted from the registration requirement under the POCL. • Beneficial ownership information is not obtained, verified, and maintained for general partnerships.
International Cooperation		
35. Conventions	LC	<ul style="list-style-type: none"> • Ratification of the Palermo Convention has not yet been extended to Jersey. • Not all provisions of the Palermo and Vienna Conventions are fully implemented.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • For certain money laundering offenses, seizing and confiscation measures are not available for all types of property as required by the FATF Recommendations. • Deficiencies in the ML criminalization affect the MLA capacity where the dual criminality principle applies.
37. Dual criminality	C	
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • For certain money laundering offenses, seizing and confiscation measures are not available for all types of property as required by the FATF Recommendations. • Deficiencies in the ML criminalization affect the MLA capacity where the dual criminality principle applies.
39. Extradition	LC	<ul style="list-style-type: none"> • Deficiencies in the ML criminalization affect the extradition capacity due to the application of the dual criminality principle.
40. Other forms of co-operation	C	
Nine Special Recommendations		
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> • Not all provisions of the FT Conventions are fully implemented. • Not all requirements under UNSCR 1267 and

		1373 are fully implemented.
SR.II	Criminalize terrorist financing	LC <ul style="list-style-type: none"> Article 2 of the TL does not contain a reference to international organizations. The definition of “terrorism” in Article 2 of the TL does not extend to all terrorism offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention.
SR.III	Freeze and confiscate terrorist assets	LC <ul style="list-style-type: none"> The authorities should put in place formal procedures to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373. Definition of “funds” subject to freezing does not cover assets ‘jointly’ or ‘indirectly’ owned or controlled by the relevant persons.
SR.IV	Suspicious transaction reporting	LC <ul style="list-style-type: none"> To enhance effectiveness, there appears to be scope to improve the timeliness of SAR reporting.
SR.V	International cooperation	LC <ul style="list-style-type: none"> For terrorism financing offenses, seizing and confiscation measures are not available for all types of property as required by the FATF Recommendations. Deficiencies in the FT criminalization affect the MLA capacity where the dual criminality principle applies. Deficiencies in the ML criminalization affect the extradition capacity due to the application of the dual criminality principle.
SR.VI	AML/CFT requirements for money/value transfer services	LC <ul style="list-style-type: none"> Additional training and experience needed for full effective implementation.
SR.VII	Wire transfer rules	LC <ul style="list-style-type: none"> Liberal interpretation by financial institutions of the risk-based approach in dealing with incoming wire transfers that lack full originator information.
SR.VIII	Nonprofit organizations	C
SR.IX	Cross-Border Declaration & Disclosure	LC <ul style="list-style-type: none"> Not yet possible to demonstrate effectiveness of newly-established system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • Amend Articles 34 of the POCL and 30 of the DTOL to: <ul style="list-style-type: none"> : provide for two alternative purposes for the acts of converting and transferring proceeds, namely to avoid prosecution for the predicate offense or to conceal the illicit origin of the funds, and; : to eliminate the purpose requirement for the acts of converting and transferring proceeds of crime. • The defense (payment of adequate consideration) provided for in Articles 33(2) of the POCL and 38(2) of the DTOL is not provided for in the Vienna and Palermo Conventions and should be eliminated as it may allow money launderers to abuse the provision to avoid criminal liability for the acquisition, possession, or use of criminal proceeds. • Amend Article 18 of the TL to cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions. • Amend the offenses of acquisition, possession, or use of the POCL and DTOL, as well as the money laundering offense contained in the TL 2002 to include criminal proceeds obtained through the commission of a predicate offense by the self-launderer. • The authorities should assess whether the level of proof applied to show that property stems from the commission of a specific predicate offence poses a barrier to obtaining convictions for stand-alone money laundering.
2.2 Criminalization of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • Amend Article 2 of the TL to include a reference to international organizations. • Amend the definition of “terrorism” in Article 2 of the TL to extend to all terrorism offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention.
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • Jersey’s laws should be amended to address the deficiencies affecting the scope of the ML and FT offenses and thereby also improve the quality of the criminal confiscation regime. • Consideration should be given to providing for restraint of property and or its equivalent or corresponding value from the beginning of an investigation; • In the case of matters arising under the TL, there should be provision for the restraint and confiscation of property of corresponding value. • A more direct legal basis should be provided for the current

	'informal freezing' or consent/nonconsent arrangement currently administered by the JFCU.
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • The authorities should put in place a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373. • The legal framework implementing the UN Resolutions should be amended to expressly extend the definition of 'funds' subject to freezing to cover assets 'jointly' or 'indirectly' owned or controlled by the relevant persons. • The authorities should develop procedures to assess the effectiveness of their program to implement the UNSCRs and keep statistics regarding implementation.
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> • The Intelligence Wing of the JFCU should be adequately staffed to perform its functions effectively. • The JFCU should issue periodic reports including statistics, typologies and trends and information on its activities. • The JFCU should maintain comprehensive statistics on the work of the Intelligence Wing on matters relevant to the effectiveness and efficiency of systems for combating ML and FT.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> • The authorities should implement steps to improve effectiveness by seeking to increase investigative resources. • Competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT.
2.7 Cross-Border Declaration & Disclosure (SR IX)	<ul style="list-style-type: none"> • Jersey should proceed with its implementation of the newly-established disclosure system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering and terrorist financing.
3. Preventive Measures– Financial Institutions	
3.1 Risk of money laundering or terrorist financing	none
3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)	<p>R.5</p> <ul style="list-style-type: none"> • The authorities should conduct a risk-based review of the current scope of the concessions allowing reliance on third parties to conduct CDD and limit their availability to be strictly consistent with the FATF Recommendations. • Should the authorities decide to continue allowing source of funds to be used as a principal basis for verification of identity in certain low-risk circumstances, the requirements should be tightened further to eliminate any remaining risk of abuse for ML or FT purposes. • The authorities should review the permitted exemptions from

	<p>CDD measures in Article 18 of the MLO to ensure that financial institutions must determine that the customer's country of residence is in compliance with and has effectively implemented the FATF standards.</p> <ul style="list-style-type: none"> • The authorities should amend their requirements to ensure that all concessions from conducting full identification measures are conditioned on the absence of specific higher risk scenarios. • The authorities should expand the current list of categories of higher-risk customers in the MLO to which enhanced CDD must be applied and consider including, for example, private banking and nonresident customers. • The JFSC should conduct a risk-based review of the use by relevant persons of the scope to defer completion of full identification requirements under Article 13(4) of the MLO and issue further guidance as needed to limit the practice. • The authorities should amend the CDD requirements and guidance as necessary to ensure that, in addition to trusts, all other forms of legal arrangement are addressed adequately and consistently. • The authorities should amend their requirements to clarify that, when utilizing the concession permitting an employee of a relevant person to act on behalf of its customer, the relevant person must verify the employee's authority to so act. <p>R.6</p> <ul style="list-style-type: none"> • The JFSC should, including through its on-site examination program, continue to seek effective implementation by financial institutions of the latest CDD requirements for PEPs. <p>R.8</p> <ul style="list-style-type: none"> • The authorities should issue more detailed guidance on the specific ML and FT risks of new and developing technologies, including for example in relation to e-money and e-commerce.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • The authorities should explicitly require that a relevant person must obtain all necessary CDD information from the intermediary or introducer immediately and should consider requiring relevant persons to perform spot-testing of an intermediary or introducer's performance of CDD obligations. • The authorities should limit the concession allowing financial institutions to rely on intermediaries or introducers to conduct CDD in the following cases: <ul style="list-style-type: none"> - intermediaries or introducers outside Jersey that could be legally restricted in providing CDD evidence to Jersey institutions; - certain domestic DNFBPs until newly-introduced AML/CFT requirements have been fully implemented. • The authorities should eliminate the concession in the Handbook for Regulated Businesses permitting reliance on an intermediary or introducer that is a group member not itself subject to, nor supervised for compliance with, CDD requirements compliant

	with Recommendation 5.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • Provide explicitly that financial institutions do not breach their confidentiality duty in exchanging customer information between themselves for AML/CFT purposes.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p>SR.VII</p> <ul style="list-style-type: none"> • The authorities should take steps to ensure a stricter approach by Jersey financial institutions when dealing with incoming wire transfers that lack originator information.
3.6 Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • The authorities should amend the power to apply countermeasures to remove the limitation tying it to the actions of the FATF.
3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<p>R.13 / SR.IV</p> <ul style="list-style-type: none"> • The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU. <p>R.14</p> <ul style="list-style-type: none"> • The law should be amended to limit protection for those reporting suspicious transactions to those acting in good faith. • The tipping-off offense should be broadened by removing the limitation referring to situations that might prejudice an investigation.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>R.15</p> <ul style="list-style-type: none"> • The authorities should introduce a requirement in law, regulation, or other enforceable means that, having regard to the size and nature of the business, financial institutions maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures. • The authorities should clarify that the current provisions for timely information access for compliance officers must include customer identification data and other CDD information, transaction records, and other relevant information, including where that documentation or information is held by third parties, in or outside Jersey. <p>R.22</p> <ul style="list-style-type: none"> • The authorities should introduce a requirement in law, regulation, or other enforceable means for financial institutions to pay particular attention to the requirement to apply AML/CFT measures at least equivalent to those in Jersey in the cases of branches or subsidiaries in countries that do not or insufficiently apply the FATF Recommendations. • The authorities should introduce a requirement that financial

	institutions must apply consistent AML/CFT requirements at group level to customers doing business with different parts of the group.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	R.17 <ul style="list-style-type: none"> • The authorities should consider expanding the range of sanctioning powers available to the JFSC to include monetary fines.
3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • The JFSC should sustain its training and onsite supervision to improve compliance for MSBs.
4. Preventive Measures—Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • The authorities should: <ul style="list-style-type: none"> -Remove the concession which allows lawyers to apply reduced or simplified CDD measures in cases where funds may only be received and paid to an account in a customer's name. - Repeal the concession that allows lawyers and accountants to self-certify identification of existing clients. - Sustain close supervision of TCBs to improve compliance with CDD and record keeping requirements. • As lawyers, accountants, real estate agents, and high value dealers, gather experience with the new compliance arrangements, the authorities should continue with its program to evaluate the effectiveness of implementation by these sectors of their CDD requirements.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • The authorities should continue to conduct on-site monitoring of SAR reporting practices by lawyers, accountants, and estate agents.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • The JFSC should continue with testing implementation of AML/CFT requirements for all DNFBPs not previously subject to its supervision.
4.4 Other designated non-financial businesses and professions (R.20)	none
5. Legal Persons and Arrangements & Nonprofit Organizations	
5.1 Legal Persons—Access to	none

beneficial ownership and control information (R.33)	
5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Even though the vast majority of trust arrangements are covered by the CDD requirements of the MLO, the authorities should further seek to put in place measures to ensure that accurate, complete, and current beneficial ownership information is available for legal arrangements administered by any trustees not covered by, or exempted from, the registration requirements under the POCL. • The authorities should put in place measures to ensure that beneficial ownership information is obtained, verified, and maintained for all general partnerships.
5.3 Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> • Based on registration information, the authorities should analyze the FT vulnerability of the NPO sector.
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	none
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented. • The authorities should ensure that all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism are implemented. • Jersey should consider requesting extension of the remaining 10 international counter-terrorism related legal instruments.
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	<ul style="list-style-type: none"> • Amend the law to correct the deficiencies affecting the criminalization of ML and FT offenses, and thus facilitate full compliance with MLA requests related to seizure and confiscation where the dual criminality principle applies.
6.4 Extradition (R. 39, 37 & SR.V)	<ul style="list-style-type: none"> • Amend the law to correct the deficiencies affecting the criminalization of ML and FT offenses, and thus remove possible obstacles to complying with extradition requests where the dual criminality principle applies.
6.5 Other Forms of Cooperation (R. 40 & SR.V)	none
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> • Provide additional resources to the JFCU to deal with increasing workload. The JFCU should develop its capacity to maintain relevant statistics on all aspects of SAR analysis and external cooperation.

Annex 1. Authorities' Response to the Assessment

The findings of Jersey's previous IMF assessment were published in late 2003. That report said that Jersey had demonstrated a high level of compliance with the FATF Recommendations.

Since that assessment, Jersey has moved forward with its implementation of the revised 40 Recommendations and 9 Special Recommendations. It has implemented new legislation, introduced new regulatory requirements, and issued additional guidance. The Island has also invested substantial resources in making sure that the outcome of these changes is effective. It has done so in line with a long-standing policy that Jersey should match international standards in respect of anti-money laundering and terrorist defenses, and discourage the use of its financial services for any unlawful or improper purpose.

As a result, Jersey was very pleased to welcome the IMF assessment team and to share openly with it what the Island has done since 2003 to protect the jurisdiction from being used for money laundering and the financing of terrorism.

It is pleasing to note therefore that the report confirms that Jersey has a "high level of compliance" with almost all aspects of the revised FATF Recommendations and has been assessed as "compliant" or "largely compliant" with 44 of the 49 Recommendations and 15 of the 16 "core" and "key" Recommendations.

Like the large majority of FATF member countries, Jersey has been assessed as "partially compliant" with Recommendation 5. The Island has also been assessed as "partially compliant" with Recommendations 9, 12, 14, and 16.

Recommendation 5 sets out due diligence measures that are to be applied by financial institutions, and Recommendation 9 provides for reliance to be placed on third parties to carry out elements of those measures. Whilst the report confirms that Jersey has a high level of compliance with the FATF Recommendations on preventative measures, with most deficiencies noted being technical in nature, comment is made that the extent of concessions that permit reliance to be placed on third parties is an "overly-generous" interpretation of the international standard.

The insular authorities do not share this view. The Island has implemented FATF Recommendations 5 and 9 in a way that is equivalent to the European Union Third Money Laundering Directive. In particular, that Directive provides that customer due diligence measures (which include identifying the beneficial owner of a customer) need not be applied in the case of a customer that is a credit or financial institution.

Recommendations 12 and 16 extend the application of AML/CFT measures to designated non-financial businesses and professions ("DNFBPs"). In Jersey, such measures have been applied to DNFBPs since February 2008 (though trust and company service providers have been subject to measures for much longer). At the time of the IMF's on-site assessment, the JFSC had only recently started to monitor compliance by lawyers (concerning the provision of legal services), accountants (concerning accounting and audit services) and estate agents with requirements set in the MLO.

Since the time of the on-site assessment, the JFSC has visited half of the lawyers, accountants, and estate agents that are now registered with it, and is generally satisfied with the level of compliance that it has seen.

Assessments such as those carried out by the IMF take an enormous amount of work and effort, both by the assessment team and authorities of the jurisdiction being assessed. Whilst the assessors and insular authorities have occasionally differed on the conclusions reached, the authorities wish to thank the assessors for their patience and care in conducting their work.

In particular, the insular authorities recognize that international standards continue to evolve. With this in mind, they will give very careful consideration to the recommendations contained in the report and will carefully monitor evolving standards so that the Island remains a first choice jurisdiction for the conduct of reputable financial services. To support this, the insular authorities will publish an annual report on how they have considered the recommendations and action that they have taken.

As a first step, an amendment to the MLO will address some of the technical points that have been raised in the report.

Annex 2. Details of All Bodies Met During the On-Site Visit

List of ministries, other government authorities or bodies, private sector representatives and others.

Bailiff's Chambers
Chief Minister's Department
Home Affairs Department
Jersey Financial Services Commission (including the Companies Registry)
Joint Financial Crimes Unit
Law Officers' Department
Shadow Gambling Commission
States of Jersey Customs & Immigration Service
States of Jersey Police Force

Association of English Solicitors Practising in Jersey
Association of Jersey Charities
Jersey Association of Compliance Officers
Jersey Association of Trust Companies
Jersey Bankers Association
Jersey Citizens Advice Bureau
Jersey Funds Association
Jersey Society of Chartered and Certified Accountants
Law Society of Jersey

5 individual banks
1 individual insurer
1 funds service business
1 securities firm
2 bureau de change/payment system providers
3 trust companies
2 law firms
2 accountancy firms
1 real estate business
1 dealer in high value goods
1 non-profit organization

Annex 3. List of All Laws, Regulations, and Other Material Received

1. Drug Trafficking Offences (Jersey) Law 1988;
2. Proceeds of Crime (Jersey) Law 1999;
3. Terrorism (Jersey) Law 2002;
4. Customs and Excise (Jersey) Law 1999;
5. Investigation of Fraud (Jersey) Law 1991;
6. Police Force (Jersey) Law 1974;
7. Police Procedures and Criminal Evidence (Jersey) Law 2003;
8. Proceeds of Crime (Cash Seizure) (Jersey) Law 2008;
9. Regulation of Investigatory Powers (Jersey) Law 2005;
10. Civil Asset Recovery (International Co-operation) (Jersey) Law 2007;
11. Criminal Justice (Forfeiture Orders) (Jersey) Law 2001;
12. Criminal Justice (International Co-operation) (Jersey) Law 2001;
13. Criminal Justice (International Co-operation) (Jersey) Regulations 2008;
14. Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008;
15. Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983;
16. Extradition (Jersey) Law 2004;
17. Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008;
18. Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008;
19. Al-Qa'ida and Taliban (United Nations Measures)(Channel Islands) Order 2002;
20. Community Provisions (Wire Transfers) (Jersey) Regulations 2007;
21. Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector;
22. Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Estate Agents and High Value Dealers;
23. Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector;
24. Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws;
25. Money Laundering (Jersey) Order 2008;
26. Terrorism (United Nations Measures)(Channel Islands) Order 2001;
27. Companies (Jersey) Law 1991;
28. Control of Borrowing (Jersey) Law 1947;
29. Control of Borrowing (Jersey) Order 1958;
30. Limited Liability Partnerships (Jersey) Law 1997;
31. Limited Partnership (Jersey) Law 1994;
32. Trusts (Jersey) Law 1984;
33. Banking Business (Jersey) Law 1991;
34. Collective Investment Funds (Jersey) Law 1988;
35. Financial Services (Jersey) Law 1998;
36. Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007;
37. Financial Services (Money Service Business (Registration)) (Jersey) Order 2007;
38. Financial Services Commission (Jersey) Law 1998;
39. Insurance Business (Jersey) Law 1996;
40. Non-Profit Organizations (Jersey) Law 2008;

41. Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;
42. Proceeds of Crime (Supervisory Bodies) (Designation of Supervisory Bodies) (Jersey) Order 2008;
43. Island Strategy to Counter Money Laundering and the Financing of Terrorism;
44. Mutual Legal Assistance Guidelines;
45. Typologies from a Jersey Perspective.

Annex 4. Copies of Key Laws, Regulations, and Other Measures

This Annex contains:

1. Relevant extracts from:
 - Drug Trafficking Offences (Jersey) Law 1988;
 - Proceeds of Crime (Jersey) Law 1999;
 - Terrorism (Jersey) Law 2002;
 - Customs and Excise (Jersey) Law 1999;
 - Proceeds of Crime (Cash Seizure) (Jersey) Law 2008;
 - Extradition (Jersey) Law 2004;
 - Al-Qa'ida and Taliban (United Nations Measures)(Channel Islands) Order 2002;
 - Terrorism (United Nations Measures)(Channel Islands) Order 2001;
 - Companies (Jersey) Law 1991;
 - Control of Borrowing (Jersey) Order 1958;
 - Non-Profit Organizations (Jersey) Law 2008.
2. Proceeds of Crime (Jersey) Law (index only).
3. Money Laundering (Jersey) Order 2008.

Drug Trafficking Offences (Jersey) Law 1988

1 Interpretation

- (1) In this Law unless the context otherwise requires –

“drug money laundering” means doing any act which constitutes an offence under Article 30, 37 or 38 or in the case of an act done outside Jersey would constitute such an offence if done in Jersey; and for the purposes of this definition, having possession of any property shall be taken to be doing an act in relation to it;

“drug trafficking offence” means any of the following –

- (a) an offence under Article 5 or 8(2) of the Misuse of Drugs (Jersey) Law 1978;
- (b) an offence under Article 6 of the Misuse of Drugs (Jersey) Law 1978;
- (c) an offence under Article 21(5) of the Misuse of Drugs (Jersey) Law 1978;
- (d) an offence under Article 61 of the Customs and Excise (Jersey) Law 1999 in connection with a prohibition or restriction on importation or exportation having effect by virtue of Article 4 of the Misuse of Drugs (Jersey) Law 1978 or of Article 29 of this Law;
- (e) an offence under Article 30, 37, 38 or 46;
- (f) an offence of conspiracy to commit any of the offences in subparagraphs (a) to (e);
- (g) an offence of attempting to commit any of those offences;
- (h) an offence of inciting another to commit any of those offences; and
- (i) aiding, abetting or participating in the commission of any of those offences;

3 Confiscation orders

- (1) Where a person appears before the Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of the conviction for the offence or, as the case may be, any of the offences concerned), then –
 - (a) if the Attorney General asks the Court to proceed under this Article; or
 - (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to proceed under this Article,
 it may act as follows.
- (2) The Court may first determine whether the person has benefited from drug trafficking.
- (3) For the purposes of this Law, a person who has at any time (whether before or after the commencement of this Article) received any payment or other reward in

connection with drug trafficking carried on by the person or another has benefited from drug trafficking.

- (4) If the Court determines that the person has so benefited, the Court may, before sentencing or otherwise dealing with the defendant in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with Article 8 the amount to be recovered in the person's case by virtue of this Article.
- (5) The Court may then, in respect of the offence or offences concerned –
 - (a) order the person to pay that amount;
 - (b) take account of the order before –
 - (i) imposing any fine on the person,
 - (ii) making any order involving any payment by the person, or
 - (iii) making any order under Article 29 of the Misuse of Drugs (Jersey) Law 1978; and
 - (c) subject to sub-paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.
- (6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with the offender also in any other way shall by reason only of the making of an order under this Article restrict the Court from dealing with an offender in any way the Court considers appropriate in respect of a drug trafficking offence.
- (7) The standard of proof required to determine any question arising under this Law as to –
 - (a) whether a person has benefited from drug trafficking; or
 - (b) the amount to be recovered in the person's case by virtue of this Article,
 shall be that applicable in civil proceedings.

15 Cases in which *saisies judiciaires* may be made

- (1) The powers conferred on the Court by Article 16 are exercisable where –
 - (a) the Court has made a confiscation order; or
 - (b) proceedings have been instituted in Jersey against the defendant for a drug trafficking offence or an application has been made by the Attorney General in respect of the defendant under Article 9, 12, 13, 14 or 19 and –
 - (i) the proceedings have not, or the application has not, been concluded, and
 - (ii) the Court is satisfied that there is reasonable cause to believe –
 - (A) in the case of an application under Article 14 or 19, that the Court will be satisfied as mentioned in Article 14(4) or, as the case may be, Article 19(2), or
 - (B) in any other case, that the defendant has benefited from drug trafficking; or

- (c) the Court is satisfied –
 - (i) that proceedings are to be instituted in Jersey against a person for a drug trafficking offence, or that an application of a kind mentioned in sub-paragraph (b) is to be made against the defendant, and
 - (ii) is also satisfied as mentioned in sub-paragraph (b)(ii).
- (2) For the purposes of Article 16, at any time when those powers are exercisable before proceedings have been instituted –
 - (a) references in this Law to the defendant shall be construed as references to the person referred to in paragraph (1)(c);
 - (b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (1)(c) for a drug trafficking offence.
- (3) Where the Court has made an order under Article 16 by virtue of paragraph (1)(c), the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.
- (4) Where the Court has made an order under Article 16 in relation to a proposed application by virtue of paragraph (1)(c), the Court shall discharge the order if the application is not made within such time as the Court considers reasonable.
- (5) The Court shall not exercise powers under Article 16, by virtue of paragraph (1)(a) or (b), if it is satisfied that –
 - (a) there has been undue delay in continuing the proceedings or application in question; or
 - (b) the Attorney General does not intend to proceed.

16 *Saisies judiciaires*

- (1) The Court may, subject to such conditions and exceptions as may be specified therein, make an order (in this Law referred to as a “*saisie judiciaire*”) on an application made by or on behalf of the Attorney General.
- (2) An application for a *saisie judiciaire* may be made on an *ex parte* application to the Bailiff in Chambers.
- (3) A *saisie judiciaire* shall provide for notice to be given to any person affected by the order.
- (4) Subject to paragraph (5), on the making of a *saisie judiciaire* –
 - (a) all the realisable property held by the defendant in Jersey shall vest in the Viscount;
 - (b) any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;
 - (c) any specified person may be prohibited from dealing with any realisable property transferred to the person after the making of the order,

and the Viscount shall have the duty to take possession of, and, in accordance with the Court's directions, to manage or otherwise deal with, any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount.

- (5) Any property vesting in the Viscount pursuant to paragraph (4)(a) shall so vest subject to all *hypothecs* and security interests with which such property was burdened prior to the vesting.
- (6) A *saisie judiciaire* –
 - (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged on satisfaction of the confiscation order.
- (7) An application for the discharge or variation of a *saisie judiciaire* may be made to the Bailiff in Chambers by any person affected by it and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.
- (8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in Jersey it shall order the registration of the order in the Public Registry.
- (9) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression) –
 - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Jersey.
- (10) Where the Court has made a *saisie judiciaire*, a police officer may, for the purpose of preventing any realisable property being removed from Jersey, seize the property.
- (11) Property seized under paragraph (10) shall be dealt with in accordance with the Court's directions.

30 Concealing or transferring proceeds of drug trafficking

- (1) A person is guilty of an offence if the person –
 - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the person's proceeds of drug trafficking; or
 - (b) converts or transfers that property or removes it from the jurisdiction,
 for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in the person's case of a confiscation order.
- (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, the person –
 - (a) conceals or disguises that property; or

- (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.
- (3) In paragraphs (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (4) A person guilty of an offence under this Article is liable to a fine or to imprisonment for a term not exceeding 14 years, or to both.

37 Assisting another to retain the benefit of drug trafficking

- (1) Subject to paragraph (3), if a person enters into or is otherwise concerned in an arrangement whereby –
 - (a) the retention or control by or on behalf of another (in this Article referred to as “A”) of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
 - (b) A’s proceeds of drug trafficking –
 - (i) are used to secure that funds are placed at A’s disposal, or
 - (ii) are used for A’s benefit to acquire property by way of investment,
 knowing or suspecting that A is a person who carried on or has carried on drug trafficking or has benefited from drug trafficking, the person is guilty of an offence.
- (2) In this Article, references to any person’s proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in the person’s hands the person’s proceeds of drug trafficking.
- (3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based –
 - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute, contract or otherwise; and
 - (b) if the person does any action in contravention of paragraph (1) and the disclosure related to the arrangement concerned, the person does not commit an offence under this Article if the disclosure is made in accordance with this paragraph, that is –
 - (i) it is made before the person does the act concerned, being an act done with the consent of the police officer, or
 - (ii) it is made after the person does the act, but is made on the person’s initiative and as soon as it is reasonable to make it.
- (4) In proceedings against a person for an offence under this Article, it is a defence to prove –

- (a) that the person did not know or suspect that the arrangement related to any person's proceeds of drug trafficking;
- (b) that the person did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in paragraph (1); or
- (c) that –
 - (i) the person intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (3) in relation to the arrangement, but
 - (ii) there is a reasonable excuse for the person's failure to make disclosure in accordance with paragraph (3)(b).
- (5) In the case of a person who was in employment at the relevant time, paragraphs (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.
- (6) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding 14 years or to a fine or to both.

38 Acquisition, possession or use of property representing proceeds of drug trafficking

- (1) A person who, knowing that any property is, or in whole or in part directly or indirectly represents, another's proceeds of drug trafficking, acquires that property or has possession or use of it, is guilty of an offence.
- (2) It is a defence to a charge of committing an offence under this Article that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of paragraph (2) –
 - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the person's use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to the person in drug trafficking shall not be treated as consideration for the purposes of paragraph (2).
- (5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a police officer any matter on which such a suspicion or belief is based –

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute, contract or otherwise; and
 - (b) if the person does any act in relation to the property in contravention of paragraph (1), the person does not commit an offence under this Article if –
 - (i) the disclosure is made before the person does the act concerned and the act is done with the consent of the police officer, or
 - (ii) the disclosure is made after the person does the act, but on the person's initiative and as soon as it is reasonable to make it.
- (6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this Article, it is a defence to prove that –
 - (a) the person intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (5); but
 - (b) there is reasonable excuse for the person's failure to make the disclosure in accordance with paragraph (5)(b).
- (8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.
- (9) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (10) No police officer shall be guilty of an offence under this Article in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

39 Enforcement of confiscation orders and external confiscation orders

- (1) The States may by Regulations direct that, subject to such modifications as may be specified in the Regulations, this Law shall apply to –
 - (a) external confiscation orders; and
 - (b) proceedings which have been or are to be instituted in a country or territory outside Jersey and may result in an external confiscation order being made there.
- (2) The States may by Regulations –
 - (a) make such provision in connection with the taking of action in a country or territory outside Jersey with a view to satisfying a confiscation order as appears to the States to be necessary or expedient;

- (b) without prejudice to the generality of sub-paragraph (a), direct that, in such circumstances as may be specified in the Regulations, proceeds which arise out of action taken in a country or territory outside Jersey with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.
- (3) Without prejudice to the generality of paragraphs (1) and (2), Regulations made under either of them may make –
 - (a) such provision as to the evidence or proof of any matter for the purposes of such Regulations or this Article; and
 - (b) such incidental, consequential and transitional provision, as appears to the States to be necessary or expedient.
- (4) In this Law –
 - “external confiscation order” means an order made by a court in a country or territory outside Jersey for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and
 - “modifications” includes additions, alterations and omissions.
- (5) On an application made by or on behalf of the government of a country or territory outside Jersey, the Court may register an external confiscation order made there if –
 - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him or her to defend them; and
 - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
- (6) In paragraph (5)(a), “appeal” includes –
 - (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (7) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

42 Investigations into drug trafficking

- (1) A police officer may, for the purpose of an investigation into drug trafficking, apply to the Bailiff for an order under paragraph (2) in relation to particular material or material of a particular description.

- (2) If on such an application the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled, the Bailiff may make an order that the person who appears to the Bailiff to be in possession of the material to which the application related shall –
 - (a) produce it to a police officer for the police officer to take away; or
 - (b) give a police officer access to it,
 within 7 days or such longer or shorter period as appears to the Bailiff to be appropriate.
- (3) The conditions referred to in paragraph (2) are –
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates –
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of or include items subject to legal professional privilege; and
 - (c) that there are reasonable grounds for believing that it is in the public interest, having regard to –
 - (i) the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.
- (4) Where the Bailiff makes an order under paragraph (2)(b) in relation to material on any premises, the Bailiff may on the application of a police officer order any person who appears to the Bailiff to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.
- (5) Provision may be made by Rules of Court as to –
 - (a) the discharge and variation of orders under this Article; and
 - (b) proceedings relating to such order.
- (6) Where the material to which an application under paragraph (1) relates consists of information contained in a computer –
 - (a) an order under paragraph (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under paragraph (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (7) An order under paragraph (2) –

- (a) shall not confer any right to production of, or access to, items subject to legal professional privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a States' Department.
- (8) An application under paragraph (1) or (4) may be made *ex parte* to the Bailiff in Chambers.

44A Financial information and monitoring

- (1) Part 1 of Schedule 2 shall have effect in respect of the obtaining of financial information.
- (2) Part 2 of Schedule 2 shall have effect in respect of account monitoring orders.

Proceeds of Crime (Jersey) Law 1999

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “criminal conduct” means conduct, whether occurring before or after Article 3 comes into force, that –
- (a) constitutes an offence specified in Schedule 1; or
 - (b) if it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey;
- “money laundering” means –
- (a) conduct that is an offence –
 - (i) under Article 32, 33 or 34 of this Law,
 - (ii) under Article 30, 37 or 38 of the Drug Trafficking Offences (Jersey) Law 1988, or
 - (iii) under any of Articles 15 to 18 of the Terrorism (Jersey) Law 2002; or
 - (b) conduct outside Jersey that, if occurring in Jersey, would be an offence specified in sub-paragraph (a).

3 Confiscation orders

- (1) Where a defendant appears before the Court to be sentenced in respect of one or more offences specified in Schedule 1, and the defendant has not previously been sentenced or otherwise dealt with in respect of his or her conviction for the offence or (as the case may be) any of the offences concerned –
- (a) if the Attorney General asks the Court to proceed under this Article; or
 - (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to proceed under this Article,
- the Court may act in accordance with this Article.
- (2) However, this Article shall not apply in the case of any proceedings against any defendant where the defendant is convicted in those proceedings of an offence that was committed before this Article comes into force.
- (3) Where the Court is proceeding under this Article, it may first determine whether the defendant has benefited from any relevant criminal conduct.
- (4) If the Court determines that the defendant has so benefited it may, before sentencing or otherwise dealing with the defendant in respect of the offence or (as the case may be) any of the offences concerned –
- (a) determine in accordance with Article 4 the amount to be recovered in the defendant’s case by virtue of this Article; and
 - (b) make a confiscation order, to the effect that the defendant pay that amount.

- (5) Where the Court makes a confiscation order –
 - (a) it shall take account of the order before –
 - (i) imposing any fine on the defendant,
 - (ii) making any order involving any payment by the defendant, or
 - (iii) making any forfeiture order under Article 29 of the Misuse of Drugs (Jersey) Law 1978, Article 26 of the Terrorism (Jersey) Law 2002 or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008; and
 - (b) subject to sub-paragraph (a), it shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant in the proceedings.
- (6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with the offender also in any other way shall by reason only of the making of an order under this Article restrict the Court from dealing with an offender in any way that the Court considers appropriate in respect of an offence specified in Schedule 1.
- (7) Where –
 - (a) the Court makes both a confiscation order and an order for the payment of compensation under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994 against the same person in the same proceedings; and
 - (b) it appears to the Court that the person will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of the person's means shall be paid out of any sums recovered under the confiscation order.
- (8) The standard of proof required to determine any question arising under this Law as to –
 - (a) whether a person has benefited from any offence; or
 - (b) the amount to be recovered in the person's case by virtue of this Article,

shall be that applicable in civil proceedings.
- (9) The States may amend Schedule 1 by Regulations, by adding, deleting or substituting any offence (not being a drug trafficking offence).

15 Cases in which *saisies judiciaires* may be made

- (1) The powers conferred on the Court by Article 16 are exercisable where –
 - (a) the Court has made a confiscation order;
 - (b) proceedings have been instituted in Jersey against the defendant for an offence specified in Schedule 1 or an application has been made by the

Attorney General in respect of the defendant under any of Articles 9, 12, 13, 14 and 19 and –

- (i) the proceedings have not, or the application has not, been concluded, and
 - (ii) the Court is satisfied that there is reasonable cause to believe –
 - (A) in the case of an application under Article 14 or 19, that the Court will be satisfied as mentioned in Article 14(3) or (as the case may be) Article 19(2), or
 - (B) in any other case, that the defendant has benefited from the offence; or
 - (c) the Court is satisfied –
 - (i) that proceedings are to be instituted in Jersey against a person for an offence specified in Schedule 1, or that an application of a kind mentioned in sub-paragraph (b) of this paragraph is to be made against the defendant, and
 - (ii) as to the matters mentioned in clause (ii) of that sub-paragraph.
- (2) For the purposes of Article 16, at any time when those powers are exercisable before proceedings have been instituted –
- (a) references in this Part to the defendant shall be construed as references to the person to whom paragraph (1)(c) of this Article refers;
 - (b) references in this Part to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person to whom paragraph (1)(c) of this Article refers for an offence specified in Schedule 1.
- (3) Where the Court has made an order under Article 16 by virtue of paragraph (1)(c) of this Article, in relation to proposed proceedings for an offence specified in Schedule 1, the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.
- (4) Where the Court has made an order under Article 16 in relation to a proposed application by virtue of paragraph (1)(c) of this Article, the Court shall discharge the order if the application is not made within such time as the Court considers reasonable.
- (5) The Court shall not exercise its powers under Article 16, by virtue of paragraph (1)(a) or (b) of this Article, if it is satisfied that –
- (a) there has been undue delay in continuing the proceedings or application in question; or
 - (b) the Attorney General does not intend to proceed.

16 *Saisies judiciaires*

- (1) The Court may, subject to such conditions and exceptions as may be specified in it, make an order (in this Part referred to as a *saisie judiciaire*) on an application made by or on behalf of the Attorney General.
- (2) An application for a *saisie judiciaire* may be made *ex parte* to the Bailiff in chambers.
- (3) A *saisie judiciaire* shall provide for notice to be given to any person affected by the order.
- (4) Subject to paragraph (5), on the making of a *saisie judiciaire* –
 - (a) all the realisable property held by the defendant in Jersey shall vest in the Viscount;
 - (b) any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;
 - (c) any specified person may be prohibited from dealing with any realisable property transferred to the person after the making of the order,

and the Viscount shall have the duty to take possession of and, in accordance with the Court's directions, to manage or otherwise deal with any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount.
- (5) Any property vesting in the Viscount pursuant to paragraph (4)(a) shall so vest subject to all hypothecs and security interests with which such property was burdened prior to the vesting.
- (6) A *saisie judiciaire* –
 - (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged on satisfaction of the confiscation order.
- (7) An application for the discharge or variation of a *saisie judiciaire* may be made to the Bailiff in chambers by any person affected by it and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.
- (8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.
- (9) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression) –
 - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Jersey.

- (10) Where the Court has made a “*saisie judiciaire*” a police officer may, for the purpose of preventing the removal of any realisable property from Jersey, seize the property.
- (11) Property seized under paragraph (10) shall be dealt with in accordance with the Court’s directions.

32 Assisting another to retain the benefit of criminal conduct

- (1) Subject to paragraph (3), if a person enters into or is otherwise concerned in an arrangement whereby –
 - (a) the retention or control by or on behalf of another (in this Article referred to as “A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
 - (b) A’s proceeds of criminal conduct –
 - (i) are used to secure that funds are placed at A’s disposal, or
 - (ii) are used for A’s benefit to acquire property by way of investment,
 knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he or she is guilty of an offence.
- (2) In this Article, references to any person’s proceeds of criminal conduct include a reference to any property that in whole or in part directly or indirectly represented in the person’s hands his or her proceeds of criminal conduct.
- (3) Where a person discloses to a police officer a suspicion or belief that any property is derived from or used in connection with criminal conduct, or discloses to a police officer any matter on which such a suspicion or belief is based –
 - (a) the disclosure shall not be treated as a breach of any restriction upon disclosure imposed by any statute or contract or otherwise, and shall not involve the person making it in liability of any kind; and
 - (b) if the person does any act in contravention of paragraph (1) and the disclosure relates to the arrangement concerned, the person does not commit an offence under this Article if –
 - (i) the disclosure is made before the person does the act concerned and the act is done with the consent of a police officer, or
 - (ii) the disclosure is made after the person does the act, but is made on the person’s initiative and as soon as it is reasonable for the person to make it.
- (4) In proceedings against a person for an offence under this Article, it is a defence to prove –
 - (a) that the person did not know or suspect that the arrangement related to any person’s proceeds of criminal conduct;

- (b) that the person did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or (as the case may be) that by the arrangement any property was used as mentioned in paragraph (1); or
- (c) that –
 - (i) the person intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (3) in relation to the arrangement, and
 - (ii) there is reasonable excuse for the person's failure to make the disclosure in accordance with paragraph (3)(b).
- (5) In the case of a person who was in employment at the relevant time, paragraphs (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.
- (6) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (7) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

33 Acquisition, possession or use of proceeds of criminal conduct

- (1) A person is guilty of an offence if, knowing that any property is or in whole or in part directly or indirectly represents another person's proceeds of criminal conduct, the person acquires or uses that property or has possession of it.
- (2) In proceedings against a person for an offence under this Article, it is a defence to prove that the person acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of paragraph (2) –
 - (a) a person acquires property for inadequate consideration if the value of the payment is significantly less than the value of the property; and
 - (b) a person uses or has possession of property for inadequate consideration if the value of the payment is significantly less than the value of the person's possession or use of it.
- (4) The provision for any person of services or goods that are of assistance to the person in criminal conduct shall not be treated as consideration for the purposes of paragraph (2).
- (5) Where a person discloses to a police officer a suspicion or belief that any property is or in whole or in part directly or indirectly represents another person's proceeds of criminal conduct, or discloses to a police officer any matter on which such a suspicion or belief is based –

- (a) the disclosure shall not be treated as a breach of any restriction upon disclosure imposed by any statute or contract or otherwise, and shall not involve the person making it in liability of any kind; and
- (b) if the person does any act in relation to that property in contravention of paragraph (1), the person does not commit an offence under this Article if –
 - (i) the disclosure is made before the person does the act concerned and the act is done with the consent of a police officer, or
 - (ii) the disclosure is made after the person does the act, but is made on the person's initiative and as soon as it is reasonable for the person to make it.
- (6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this Article, it is a defence to prove –
 - (a) that the person intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (5); and
 - (b) there is reasonable excuse for the person's failure to make the disclosure in accordance with sub-paragraph (b) of that paragraph.
- (8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to the disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.
- (9) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (10) No person shall be guilty of an offence under this Article in respect of anything done by the person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any enactment relating to criminal conduct or the proceeds of such conduct.
- (11) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

34 Concealing or transferring proceeds of criminal conduct

- (1) A person is guilty of an offence if the person –
 - (a) conceals or disguises any property that is or in whole or in part represents the person's proceeds of criminal conduct; or
 - (b) converts or transfers that property or removes it from the jurisdiction,
 for the purpose of avoiding prosecution for an offence specified in Schedule 1 or the making or enforcement in the person's case of a confiscation order.

- (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is or in whole or in part directly or indirectly represents another's proceeds of criminal conduct, the person –
 - (a) conceals or disguises that property; or
 - (b) converts or transfers that property or removes it from the jurisdiction,
 for the purpose of assisting any person to avoid prosecution for an offence specified in Schedule 1 or the making or enforcement in the person's case of a confiscation order.
- (3) In paragraphs (1) and (2), the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (4) A person guilty of an offence under this Article is liable to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (5) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

34D Failure in a financial institution to report to police officer or nominated officer

- (1) A person commits an offence if each of the following 3 conditions is satisfied.
- (2) The first condition is that the person –
 - (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting,
 that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter –
 - (a) on which the person's knowledge or suspicion is based; or
 - (b) that gives reasonable grounds for such knowledge or suspicion,
 comes to him or her in the course of the carrying on of a financial services business.
- (4) The third condition is that the person does not disclose the information or other matter to a police officer or to a nominated officer as soon as is practicable after it comes to him or her.
- (5) A person does not commit an offence under this Article if –
 - (a) the person has a reasonable excuse for not disclosing the information or other matter; or
 - (b) the person is a professional legal adviser and the information or other matter comes to him or her in circumstances of legal privilege.
- (6) A person does not commit an offence under this Article by failing to disclose any information or other matter that has come to his or her attention, if –

- (a) it comes to the person in the course of his or her employment in the financial services business;
 - (b) the person carrying on the financial services business was required by an Order made under Article 37 to provide the employee with training, but had not done so;
 - (c) the training, if it had been given, would have been material; and
 - (d) the employee does not know or suspect that the other person concerned is engaged in money laundering.
- (7) In deciding whether a person has committed an offence under this Article the court must consider whether he or she has followed any relevant guidance which was at the time concerned –
- (a) issued by the Commission; and
 - (b) published in a manner approved by the Commission as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (8) A disclosure to a nominated officer is a disclosure which –
- (a) is made to a person nominated by the employer of the person making the disclosure to receive disclosures under this Article; and
 - (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (9) Where a person to whom paragraph (1) refers discloses to a police officer or a nominated officer –
- (a) the person's suspicion or belief that another person is engaged in money laundering; or
 - (b) any information or other matter on which that suspicion or belief is based, the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
- (10) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine or to both.

36 Financial services business

- (1) For the purposes of this Law, "financial services business" means a business described in Schedule 2.
- (2) The States may amend Schedule 2 by Regulations, by adding, deleting, substituting or varying the description of any business.

37 Procedures to prevent and detect money laundering

- (1) The Minister shall, by Order, prescribe measures to be taken (including measures not to be taken) by persons who carry on financial services business, for the purposes of preventing and detecting money laundering.
- (1A) Without prejudice to the generality of paragraph (1), such measures may include –
 - (a) identification procedures;
 - (b) record keeping procedures;
 - (c) internal reporting procedures; and
 - (d) training procedures,
 to be maintained by persons who carry on financial services business.
- (2) An Order made under this Article –
 - (a) may specify supervisory authorities for the purposes of the Order;
 - (b) may authorize or require any person who acquires information in the course of the application of any procedure under any such Order, or in the course of carrying out any function under any such Order, or under any other enactment to which the Order refers, to disclose that information to a police officer, the Commission or any person or institution with whom that person shares common ownership, management or compliance control; and
 - (c) may make such other provision as is reasonably necessary or incidental to the purposes of the Order.
- (3) No disclosure in accordance with an Order made under this Article to any person mentioned in paragraph (2)(b) shall be treated as a breach of any restriction on disclosure imposed by any enactment or contract or otherwise or involve the person making it in liability of any kind.
- (4) If a person carrying on a financial services business contravenes or fails to comply with a requirement that is contained in any Order made under this Article and applies to that business, the person shall be guilty of an offence.
- (5) Where an offence under paragraph (4) by a body corporate is proved –
 - (a) to have been committed with the consent or connivance of; or
 - (b) to be attributable to any neglect on the part of,
 a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he or she, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (6) Where an offence under paragraph (4) by an unincorporated association is proved –
 - (a) to have been committed with the consent or connivance of; or
 - (b) to be attributable to any neglect on the part of,

a person concerned in the management or control of the association, the person, as well as the association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (7) Any person who is guilty of an offence under this Article is liable –
 - (a) if the person is a body corporate, to a fine; or
 - (b) if the person is not a body corporate, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (8) In determining whether a person has complied with a requirement that is contained in any Order made under this Article, the court –
 - (a) shall take account of any relevant Code of Practice or guidance that applies to that person or the business carried on by that person and is issued by the supervisory body exercising supervisory functions in respect of that person; or
 - (b) if no such Code of Practice or guidance applies, shall take into account any relevant Code of Practice or guidance that is issued by another supervisory body; or
 - (c) if there is no such relevant Code of Practice or guidance, may take account of any other relevant guidance issued by a body that is representative of that person or any supervised business carried on by that person.
- (9) For the purposes of paragraph (8), “Code of Practice”; “supervisory body” and “supervised business” have the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.
- (10) In proceedings against a person for an offence under this Article, it is a defence to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence.

38 Recognition of external confiscation orders

- (1) The States may by Regulations direct that, subject to such modifications as may be specified in the Regulations, this Law shall apply to –
 - (a) external confiscation orders; and
 - (b) proceedings which have been or are to be instituted in a country or territory outside Jersey and may result in an external confiscation order being made there.
- (2) Without prejudice to the generality of paragraph (1), Regulations made under it may make –
 - (a) such provision as to the evidence or proof of any matter for the purposes of such Regulations and Article 39; and
 - (b) such incidental, consequential and transitional provision,
 as appears to the States to be necessary or expedient.

39 Registration of external confiscation orders

- (1) On the application of the Attorney General, the Court may register an external confiscation order if –
 - (a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and
 - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
- (2) In paragraph (1), “appeal” includes –
 - (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (3) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by the payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

40 Investigations relating to proceeds of criminal conduct

- (1) A police officer may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the Bailiff for an order under paragraph (2) in relation to particular material or material of a particular description.
- (2) If, on such an application, the Bailiff is satisfied that the conditions in paragraph (4) are fulfilled, the Bailiff may make an order that the person who appears to be in possession of the material to which the application relates shall –
 - (a) produce it to a police officer for the police officer to take away; or
 - (b) give a police officer access to it and, if so required by the police officer, permit him or her to make copies of it,
 within such period as the order may specify.
- (3) The period to be specified in an order under paragraph (2) shall be 7 days unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions to which paragraph (2) refers are –
 - (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates –

- (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given, having regard –
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it.
- (5) Where the Bailiff makes an order under paragraph (2) giving a police officer access to material on any premises the Bailiff may, on the application of a police officer, order any person who appears to the Bailiff to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.
- (6) An application under paragraph (1) or (5) may be made *ex parte* to the Bailiff in chambers.
- (7) An application for the discharge or variation of an order under this Article may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.
- (8) Where the material to which an application under paragraph (1) relates consists of information contained in a computer –
 - (a) an order under paragraph (2) to produce material to a police officer for the police officer to take away shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under paragraph (2) giving a police officer access to material shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (9) An order under paragraph (2) –
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any statute or contract or otherwise; and
 - (c) may be made in relation to material in the possession of a States department.
- (10) No application may be made under this Article without the consent of the Attorney General or a Crown Advocate.

- (11) Provision may be made by Rules of Court for the manner in which applications may be made under this Article.
- (12) A person who, without reasonable excuse –
 - (a) fails to comply with an order under this Article; or
 - (b) obstructs a police officer who is acting or attempting to act in pursuance of such an order,
 is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (13) If a person –
 - (a) knows or suspects that an investigation to which paragraph (1) refers is being or is likely to be carried out; and
 - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of material that the person knows or suspects is or would be relevant to such an investigation,
 the person shall be guilty of an offence and liable to imprisonment for 7 years or to a fine or to both, unless the person proves that the act or omission was inadvertent.

41A Financial information and monitoring

- (1) Part 1 of Schedule 3 shall have effect in respect of the obtaining of financial information.
- (2) Part 2 of Schedule 3 shall have effect in respect of account monitoring orders.

SCHEDULE 1

OFFENCES FOR WHICH CONFISCATION ORDERS MAY BE MADE

Any offence in Jersey for which a person is liable on conviction to imprisonment for a term of one or more years (whether or not the person is also liable to any other penalty) but not being a drug trafficking offence.

SCHEDULE 2

FINANCIAL SERVICES BUSINESS

PART A

BUSINESS REGULATED BY THE COMMISSION UNDER REGULATORY LAWS

1. Any deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991 except the doing of anything described in Article 8(2)(a) to (c) of that Law.
2. Any long-term business as defined in Article 1(1) of the Insurance Business (Jersey) Law 1996 except –
 - (a) insurance business described in Article 5(5)(a) of that Law;
 - (b) insurance business described in Article 1 of the Insurance Business (General Provisions) (Jersey) Order 1996.
- 3.(1) Any of the following within the meaning of the Collective Investment Funds (Jersey) Law 1988 –
 - (a) the business of being a functionary;
 - (b) the business of a recognized fund;
 - (c) the business of an unclassified fund.
- (2) However, business referred to in sub-paragraph (1) does not include the business of a company, being a company issuing units that is within Article 1A of the Collective Investment Funds (Permits) (Exemptions) (Jersey) Order 1994.
4. Financial service business as defined in Article 1(1) of the Financial Services (Jersey) Law 1998 –
 - (a) including the activities described in Schedule 2 to that Law except those mentioned in –
 - (i) paragraphs 1, 3B, 3C, 4, 10, 14, 15, 18A and 21,
 - (ii) paragraph 7 where a person accepts or becomes a party to an instrument as principal,
 - (iii) paragraph 8 where the persons described in sub-paragraphs (1), (2) or (3) are connected companies, except in the circumstances described at the end of sub-paragraph (2) or (3),
 - (iv) paragraph 16 except where a person is acting as a protector of a trust by way of business,
 - (v) paragraph 18, where the relevant special purpose vehicle is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business;
 - (b) excluding general insurance mediation business;
 - (c) excluding investment business carried on by an overseas person mentioned in Article 1 of the Financial Services (Investment Business (Overseas Persons – Exemption)) (Jersey) Order 2001 where that business is carried on in the circumstances described in that Order;
 - (ca) excluding special purpose investment business carried on in accordance with the exemption set out in the Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001 by a person who –

- (i) is acting as a functionary within the meaning of that Order, and
 - (ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of that Law) by a person who is registered under that Law to carry on fund services business;
- (cb) excluding restricted investment business carried on in accordance with the exemption set out in the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001 by a person who –
 - (i) is acting as a functionary within the meaning of that Order, and
 - (ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of that Law) by a person who is registered under that Law to carry on fund services business;
- (d) excluding trust company business carried on by a person specified in any of the paragraphs in the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 specified below where the business is carried on in the circumstances described in that paragraph –
 - (i) paragraph 4 (private trust company business),
 - (ii) paragraph 8 (address providers),
 - (iii) paragraph 11 (connected company),
 - (iv) paragraph 12 (introducer),
 - (v) paragraph 13 (director),
 - (vi) paragraph 15 (director – registered person),
 - (vii) paragraph 16 (liquidators and trustees in bankruptcy of persons other than registered persons),
 - (viii) paragraph 18 (recruitment agents);
- (e) excluding trust company business carried on by a person specified in any of the paragraphs in the Schedule to the Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000 specified below where that business is carried on in the circumstances described in that paragraph –
 - (i) paragraph 1 (overseas persons),
 - (ii) paragraph 2 (unit holding nominee company),
 - (iii) paragraph 3 (electronic communications service providers);
- (f) excluding trust company business carried on by a person specified in any of the paragraphs of the Schedule to the Financial Services (Trust Company

Business (Exemptions No. 3)) (Jersey) Order 2001 specified below where that business is carried on in the circumstances described in that paragraph –

- (i) paragraph 1 (private protector company),
- (ii) paragraph 2 (general partner),
- (iii) paragraph 4 (investment company subsidiary);
- (g) excluding trust company business carried on by a person specified in paragraph 1 (connected persons) of the Schedule to the Financial Services (Trust Company Business (Exemptions No. 4)) (Jersey) Order 2001 where that business is carried on in the circumstances mentioned in that paragraph;
- (h) excluding trust company business carried on in accordance with the exemption set out in the Financial Services (Trust Company Business (Exemptions No. 5)) (Jersey) Order 2001 by a person who –
 - (i) is specified in the Schedule to that Order, and
 - (ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business;
- (i) excluding money service business specified in Article 3 of the Financial Services (Money Service Business) (Exemptions) (Jersey) Order 2007.

PART B

OTHER BUSINESS

1 Lawyers

- (1) The business of providing services by independent legal professionals.
- (2) In this paragraph “independent legal professionals” means those who by way of business provide legal or notarial services to third parties when participating in financial, or immovable property, transactions concerning any of the following –
 - (a) the buying and selling of immovable property or business entities;
 - (b) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;
 - (c) the managing of client money, securities or other assets;
 - (d) the opening or management of bank, savings or securities accounts;
 - (e) the organization of contributions necessary for the creation, operation or management of companies; or
 - (f) the creation, operation or management of trusts, companies or similar structures.

- (3) Sub-paragraph (2) does not include legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.
- (4) For the purposes of this paragraph, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a third party in the transaction.

2 Accountants

- (1) The business of providing any of the following –
 - (a) external accountancy services;
 - (b) advice about the tax affairs of another person;
 - (c) audit services; or
 - (d) insolvency services.
- (2) “External accountancy services” means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties.
- (3) “Audit services” are audit services provided by way of business pursuant to any function under any enactment.
- (4) “Insolvency services” are services provided by a person if, by way of business, that person accepts appointment as –
 - (a) a liquidator under Chapter 4 of Part 21 of the Companies (Jersey) Law 1991;
 - (b) an insolvency manager appointed under Part 5 of the Limited Liability Partnerships (Jersey) Law 1997 as that Law has effect in its application to insolvent limited liability partnerships pursuant to the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998; or
 - (c) as agent of an official functionary appointed in the case of a *remise de biens, cession, or désastre*.

3 Estate agency services

- (1) The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property), whether the property is situated in Jersey or overseas.
- (2) The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of shares the ownership of which entitles the owner to occupy immovable property, whether the property is situated in Jersey or overseas.

4 Services provided by high value dealers

- (1) “High value dealers” means persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least 15,000 Euros (or sterling equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.
- (2) In this paragraph, “cash” means any of the following in any currency – notes, coins, travellers’ cheques, bearer negotiable instruments.

5 Casinos (including internet casinos)

- (1) The business of operating a casino.
- (2) For the purposes of this Law, a casino is an arrangement whereby people are given an opportunity to participate in one or more casino games.
- (3) “Casino game” means a game of chance –
 - (a) that involves playing or staking against a bank (whether described as a “bank” and whether or not controlled or administered by a player); and
 - (b) where the chances are not equally favourable to all participants.
- (4) For the avoidance of doubt, the provision of the game commonly known as Crown and Anchor in the circumstances permitted under Regulation 9 of the Gambling (Gaming and Lotteries) (Jersey) Regulations 1965 does not fall within sub-paragraph (1).

6 Unregulated funds

The business of an unregulated fund, being an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008.

7 Other services

- (1) The business of providing any of the following services to third parties, where the business is not otherwise included in this Schedule –
 - (a) acceptance of deposits and other repayable funds from the public;
 - (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), financing of commercial transactions (including forfeiting);
 - (c) financial leasing;
 - (d) money transmission services;
 - (e) issuing and administering means of payment (such as credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts, and electronic money);
 - (f) guarantees and commitments;

- (g) trading for the account of third parties in –
 - (i) money market instruments (cheques, bills, certificates of deposit, derivatives etc.),
 - (ii) foreign exchange,
 - (iii) futures and options (financial and commodity),
 - (iv) exchange, interest rate and index instruments,
 - (v) transferable securities;
 - (h) participation in securities issues and the provision of services related to such issues;
 - (i) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
 - (j) money broking;
 - (k) portfolio management and advice;
 - (l) safekeeping and administration of securities;
 - (m) safe custody services;
 - (n) otherwise investing, administering or managing funds or money on behalf of third parties.
- (2) A reference in this paragraph to providing services to third parties shall not include a company's providing a service to a connected company.
- (3) For the purposes of this paragraph, a company is connected with another company if –
- (a) the companies are in the same group;
 - (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights (other than as nominee shareholder) which are attributable to the share capital and are exercisable in all circumstances at any general meeting of the other company or of its holding company; or
 - (c) the first-mentioned company holds, or a company in the same group as the first-mentioned company holds, an interest in the equity share capital of the other company carrying rights to vote in all circumstances at general meetings for the purpose of securing a contribution to the activities of the first-mentioned company or the company in the same group as that company respectively by the exercise of control or influence arising from that interest.
- (4) In this paragraph, “group” and “holding company” have the same meanings as in the Financial Services (Jersey) Law 1998.

8 The business of forming and administering legal persons or arrangements

The business of providing services to or in respect of types of legal person or arrangement other than those described in Article 2(5)(a) and (b) of the Financial Services (Jersey) Law 1998, in the course of which services are provided that are similar or equivalent to those described in Article 2(4) of that Law as if Article 2(4) referred to that type of legal person or arrangement.

Terrorism (Jersey) Law 2002**2 “Terrorism”**

- (1) In this Law “terrorism” means the use or threat of action where –
 - (a) the action falls within paragraph (2);
 - (b) the use or threat is designed to influence the States of Jersey or the government of any other place or country or to intimidate the public or a section of the public; and
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this paragraph if it –
 - (a) involves serious violence against a person;
 - (b) involves serious damage to property;
 - (c) endangers a person’s life, other than that of the person committing the action;
 - (d) creates a serious risk to the health or safety of the public or a section of the public; or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within paragraph (2) which involves the use of firearms or explosives is terrorism whether or not paragraph (1)(b) is satisfied.
- (4) In this Article –
 - (a) “action” includes action outside Jersey;
 - (b) a reference to any person or to property is a reference to any person, or to property wherever situated;
 - (c) a reference to the public includes a reference to the public of a place or country other than Jersey.
- (5) In this Law a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organization.

3 “Terrorist property”

- (1) In this Law “terrorist property” means –
 - (a) property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organization);
 - (b) proceeds of the commission of acts of terrorism; and
 - (c) proceeds of acts carried out for the purposes of terrorism.
- (2) In paragraph (1) –

- (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission); and
- (b) the reference to an organization's resources includes a reference to any property which is applied or made available, or is to be applied or made available, for use by the organization.

13 Support

- (1) A person commits an offence if –
 - (a) he or she invites support for a proscribed organization; and
 - (b) the support is not, or is not restricted to, the provision of property (within the meaning of Article 16).
- (2) A person commits an offence if he or she arranges, manages or assists in arranging or managing a meeting which he or she knows is –
 - (a) to support a proscribed organization;
 - (b) to further the activities of a proscribed organization; or
 - (c) to be addressed by a person who belongs or professes to belong to a proscribed organization.
- (3) A person commits an offence if he or she addresses a meeting and the purpose of his or her address is to encourage support for a proscribed organization or to further its activities.
- (4) Where a person is charged with an offence under paragraph (2)(c) in respect of a private meeting it is a defence for the person to prove that he or she had no reasonable cause to believe that the address mentioned in paragraph (2)(c) would support a proscribed organization or further its activities.
- (5) In paragraph (2) to (4) –
 - (a) “meeting” means a meeting of 3 or more persons, whether or not the public are admitted; and
 - (b) a meeting is private if the public are not admitted.
- (6) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or to a fine, or both.

15 Fund-raising

- (1) A person commits an offence if he or she –
 - (a) invites another to provide property; and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.
- (2) A person commits an offence if he or she –

- (a) receives property; and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.
- (3) A person commits an offence if he or she –
 - (a) provides property; and
 - (b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.
- (5) In this Article, a reference to the provision of property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

16 Use and possession

- (1) A person commits an offence if he or she uses property for the purposes of terrorism.
- (2) A person commits an offence if he or she –
 - (a) possesses property; and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.
- (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

17 Funding arrangements

- (1) A person commits an offence if –
 - (a) he or she enters into or becomes concerned in an arrangement as a result of which property is made available or is to be made available to another; and
 - (b) he or she knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- (2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

18 Money laundering

- (1) A person commits an offence if he or she enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property –
 - (a) by concealment;
 - (b) by removal from Jersey;

- (c) by transfer to nominees; or
 - (d) in any other way.
- (2) It is a defence for a person charged with an offence under paragraph (1) to prove that he or she did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.
 - (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

19 Articles 15 to 18: jurisdiction

- (1) If –
 - (a) a person does anything outside Jersey; and
 - (b) the person’s action would have constituted the commission of an offence under any of Articles 15 to 18 if it had been done in Jersey,
 he or she shall be guilty of the offence.
- (2) For the purposes of paragraph (1)(b), Article 18(1)(b) shall be read as if for “Jersey” there were substituted “any country or place outside Jersey”.

20 Disclosure of information: duty

- (1) This Article applies where a person –
 - (a) believes or suspects that another person has committed an offence under any of Articles 15 to 18; and
 - (b) bases his or her belief or suspicion on information which comes to his or her attention in the course of a trade, profession, business or employment.
- (2) But this Article shall not apply if the information came to the person in the course of the business of a financial institution.
- (3) The person commits an offence if he or she does not disclose to an officer of the Force or customs officer as soon as is reasonably practicable –
 - (a) his or her belief or suspicion; and
 - (b) the information on which it is based.
- (4) It is a defence for a person charged with an offence under paragraph (3) to prove that he or she had a reasonable excuse for not making the disclosure.
- (5) Where –
 - (a) a person is in employment;
 - (b) the person’s employer has established a procedure for the making of disclosures of the matters specified in paragraph (3); and
 - (c) he or she is charged with an offence under that paragraph,

it is a defence for the person to prove that he or she disclosed the matters specified in that paragraph in accordance with the procedure.

- (6) Paragraph (3) does not require disclosure by a professional legal adviser of –
 - (a) information which the professional legal adviser obtains in privileged circumstances; or
 - (b) a belief or suspicion based on information which the professional legal adviser obtains in privileged circumstances.
- (7) For the purpose of paragraph (6) information is obtained by an adviser in privileged circumstances if it comes to him or her, otherwise than with a view to furthering a criminal purpose –
 - (a) from a client or a client's representative, in connection with the provision of legal advice by the adviser to the client;
 - (b) from a person seeking legal advice from the adviser, or from the person's representative; or
 - (c) from any person, for the purpose of actual or contemplated legal proceedings.
- (8) For the purposes of paragraph (1)(a) a person shall be treated as having committed an offence under one of Articles 15 to 18 if –
 - (a) he or she has taken an action or been in possession of a thing; and
 - (b) he or she would have committed an offence under one of those Articles if the person had been in Jersey at the time when he or she took the action or was in possession of the thing.
- (9) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

21 Disclosure of information: permission

- (1) A person may disclose to an officer of the Force or customs officer –
 - (a) a suspicion or belief that any property is terrorist property or is derived from terrorist property;
 - (b) any matter on which the suspicion or belief is based.
- (2) A person may make a disclosure to an officer of the Force or customs officer in the circumstances mentioned in Article 20(1) and (2).
- (3) Paragraphs (1) and (2) shall have effect notwithstanding any restriction on the disclosure of information imposed by any enactment or otherwise.
- (4) Where –
 - (a) a person is in employment; and
 - (b) the person's employer has established a procedure for the making of disclosures of the kinds mentioned in paragraph (1) and Article 20(3),

paragraphs (1) and (2) shall have effect in relation to that person as if any reference to disclosure to an officer of the Force included a reference to disclosure in accordance with the procedure.

22 Co-operation with police

- (1) A person does not commit an offence under any of Articles 15 to 18 if he or she is acting with the express consent of an officer of the Force or customs officer.
- (2) Subject to paragraphs (3) and (4), a person does not commit an offence under any of Articles 15 to 18 by involvement in a transaction or arrangement relating to property if the person discloses to an officer of the Force or customs officer –
 - (a) his or her suspicion or belief that the property is terrorist property; and
 - (b) the information on which his or her suspicion or belief is based.
- (3) Paragraph (2) applies only where a person makes a disclosure –
 - (a) after the person becomes concerned in the transaction concerned;
 - (b) on his or her own initiative; and
 - (c) as soon as reasonably practicable.
- (4) Paragraph (2) does not apply to a person if –
 - (a) an officer of the Force or customs officer forbids him or her to continue his or her involvement in the transaction or arrangement to which the disclosure relates; and
 - (b) the person continues his or her involvement.
- (5) It is a defence for a person charged with an offence under any of Articles 15(2) and (3) and 16 to 18 to prove that –
 - (a) the person intended to make a disclosure of the kind mentioned in paragraphs (2) and (3); and
 - (b) there is reasonable excuse for his or her failure to do so.
- (6) Where –
 - (a) a person is in employment; and
 - (b) the person's employer has established a procedure for the making of disclosures of the same kind as may be made to an officer of the Force or customs officer under paragraph (2),

this Article shall have effect in relation to that person as if any reference to disclosure to an officer of the Force or customs officer included a reference to disclosure in accordance with the procedure.
- (7) A reference in this Article to a transaction or arrangement relating to property includes a reference to use or possession.

23 Failure to disclose: financial institutions

- (1) A person commits an offence if each of the following 3 conditions is satisfied.
- (2) The first condition is that the person –
 - (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting,
 that another person has committed an offence under any of Articles 15 to 18.
- (3) The second condition is that the information or other matter –
 - (a) on which the person's knowledge or suspicion is based; or
 - (b) which gives reasonable grounds for such knowledge or suspicion,
 came to him or her in the course of the business of a financial institution.
- (4) The third condition is that the person does not disclose the information or other matter to an officer of the Force, a customs officer or a nominated officer as soon as is practicable after it comes to him or her.
- (5) But a person does not commit an offence under this Article if –
 - (a) the person has a reasonable excuse for not disclosing the information or other matter;
 - (b) the person is a professional legal adviser and the information or other matter came to him or her in privileged circumstances.
- (5A) A person does not commit an offence under this Article by failing to disclose any information or other matter that has come to his or her attention, if –
 - (a) it comes to the person in the course of his or her employment in the financial institution;
 - (b) the financial institution was required by an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999 to provide the employee with training, but had not done so;
 - (c) the training, if it had been given, would have been material; and
 - (d) the employee does not know or suspect that the other person concerned had committed an offence under any of Articles 15 to 18.
- (6) In deciding whether a person has committed an offence under this Article, the court –
 - (a) shall take account of any relevant Code of Practice or guidance that applies to that person or the business carried on by that person and is issued by the supervisory body exercising supervisory functions in respect of that person; or
 - (b) if no such Code of Practice or guidance applies, shall take into account any relevant Code of Practice or guidance that is issued by another supervisory body; or

- (c) if there is no such relevant Code of Practice or guidance, may take account of any other relevant guidance issued by a body that is representative of that person or any supervised business carried on by that person.
- (6A) For the purposes of paragraph (6), “Code of Practice”; “supervisory body” and “supervised business” have the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.
- (7) A disclosure to a nominated officer is a disclosure which –
 - (a) is made to a person nominated by the employer of the person making the disclosure to receive disclosures under this Article; and
 - (b) is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for the purpose.
- (8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him or her –
 - (a) by (or by a representative of) a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;
 - (b) by (or by a representative of) a person seeking legal advice from the adviser; or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- (9) But paragraph (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.
- (10) For the purposes of paragraph (2), a person is to be taken to have committed an offence there mentioned if –
 - (a) the person has taken action or been in possession of a thing; and
 - (b) the person would have committed the offence if he or she had been in Jersey at the time when he or she took the action or was in possession of the thing.
- (11) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

24 Protected disclosures

- (1) A disclosure which satisfies the following 3 conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure in the course of the business of a financial institution.
- (3) The second condition is that the information or other matter –
 - (a) causes the discloser to know or suspect; or
 - (b) gives him or her reasonable grounds for knowing or suspecting,

that another person has committed an offence under any of Articles 15 to 18.

- (4) The third condition is that the disclosure is made to an officer of the Force or a customs officer or nominated officer as soon as is practicable after the information or other matter comes to the discloser.
- (5) A disclosure to a nominated officer is a disclosure which –
 - (a) is made to a person nominated by the discloser's employer to receive disclosures under this Article; and
 - (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

26 Forfeiture of property

- (1) The court by or before which a person is convicted of an offence under any of Articles 15 to 18 may make a forfeiture order in accordance with the provisions of this Article.
- (2) Where a person is convicted of an offence under Article 15(1) or (2) or Article 16 the court may order the forfeiture of any property –
 - (a) which, at the time of the offence, the person had in his or her possession or under his or her control; and
 - (b) which, at that time, the person intended should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.
- (3) Where a person is convicted of an offence under Article 15(3) the court may order the forfeiture of any property –
 - (a) which, at the time of the offence, the person had in his or her possession or under his or her control; and
 - (b) which, at that time, the person knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.
- (4) Where a person is convicted of an offence under Article 17 the court may order the forfeiture of the property –
 - (a) to which the arrangement in question related; and
 - (b) which, at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.
- (5) Where a person is convicted of an offence under Article 18 the court may order the forfeiture of the property to which the arrangement in question related.
- (6) Where a person is convicted of an offence under any of Articles 15 to 18, the court may order the forfeiture of any property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.
- (7) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this

Article, the court shall give him or her an opportunity to be heard before making an order.

- (8) Schedule 3 shall have effect to make further provision for forfeiture orders under this Article.

31 Powers

Schedule 5 shall have effect to confer powers required for the purposes of a terrorist investigation.

32 Financial information

Schedule 6 shall have effect to confer powers required to obtain financial information.

33 Account monitoring orders

Schedule 7 shall have effect to confer further powers to obtain information regarding terrorist finance.

Customs and Excise (Jersey) Law 1999

37B Officer may require disclosure of cash

An officer may require a person who is exporting or importing goods –

- (a) to disclose if the goods consist of or include cash with a value in excess of the prescribed amount; and
- (b) to answer questions in respect of any such cash.

37C Persons entering and leaving Jersey

- (1) An officer may require a person entering or leaving Jersey –
 - (a) to disclose the value of any cash –
 - (i) contained in his or her baggage, or
 - (ii) carried with the person;
 - (b) to answer question in respect of any such cash; and
 - (c) to produce his or her baggage for inspection by the officer.
- (2) A person who, when required to produce his or her baggage, refuses or fails to do so, is guilty of an offence and is liable to a fine of –
 - (a) level 3 on the standard scale; or
 - (b) an amount equal to 3 times the value of the cash not disclosed, whichever is the higher.
- (3) Where an officer reasonably suspect that a person entering or leaving Jersey is carrying cash with a value in excess of the proscribed amount, the officer may –
 - (a) where the officer is of the same sex as the person, search the person; or
 - (b) request an officer of the same sex as the person to do so.
- (4) A person who is to be searched may require to be taken before a Jurat of the Royal Court or a superior of the officer who must –
 - (a) consider the grounds for the officer's suspicion; and
 - (b) direct whether the search is to take place.

37D Offences in respect of disclosures

- (1) A person who, when required to make a disclosure refuses to do so is guilty of an offence and is liable to imprisonment for 2 years and a fine.
- (2) A person who, when required to make a disclosure makes a disclosure, orally or in writing, that is untrue in a material particular is guilty of an offence and is liable –

- (a) if the statement was made knowingly or recklessly, to imprisonment for 2 years and a fine; or
- (b) in any other case, to a fine of level 4 on the standard scale.

37E Postal packet

- (1) This Article applies where an officer reasonably suspects that a postal packet imported into or posted for export from Jersey contains cash with a value in excess of the prescribed amount.
- (2) The proper postal officer must comply with any direction of the officer –
 - (a) to produce the packet to the officer; and
 - (b) to open it to permit its contents to be examined by the officer.

37F Cash on ships and aircraft

- (1) This Article applies where an officer reasonably suspects that there is on board –
 - (a) a ship lying within the territorial sea adjacent to Jersey; or
 - (b) an aircraft at any place within the territory of Jersey,
 cash with a value in excess of the prescribed amount.
- (2) The officer may search the ship or aircraft.

36G Questions and information

- (1) The questions that an officer may ask under this Part in respect of cash include questions about its origin and its intended use.
- (2) An officer may require evidence to be produced to the officer's satisfaction in support of any information provided under this Part.
 - (3) The Agent of the Impôts may issue directions in respect of the questions that an officer may ask under this Part and the manner in which answers are to be recorded.

Proceeds of Crime (Cash Seizure) (Jersey) Law 2008**4 Seizure of cash**

- (1) An authorized officer may seize any cash if he or she has reasonable grounds for suspecting that it is tainted cash.
- (2) An authorized officer may also seize cash, part of which he or she has reasonable grounds for suspecting to be tainted cash, if it is not reasonably practicable to seize only that part.
- (3) If an authorized officer seizes cash under this Article, he or she shall provide to the person who appears to have had possession of the cash immediately before the seizure, or on whose premises the seized cash was found, a receipt specifying the amount, denominations and currency of the cash.

5 Seized cash may be detained initially for 48 hours

Cash seized under this Law may be detained, initially, for a period of up to 48 hours, if the authorized officer continues during that period to have reasonable grounds for his or her suspicion under Article 4 that part or all of the cash is tainted cash.

6 Orders authorizing detention of cash for longer than 48 hours

- (1) The Attorney General, or, with the consent of the Attorney General, an authorized officer, may apply to the Bailiff for an order to be made under paragraph (2) in relation to cash seized under this Law.
- (2) The Bailiff may, after receiving an application under paragraph (1), make an order (a “cash detention order”) authorizing the detention, for a period specified in the order, of the cash to which the application relates.
- (3) The Bailiff may only make a cash detention order in relation to cash if he or she is satisfied –
 - (a) that there are reasonable grounds for suspecting that the cash is tainted cash; and
 - (b) that the continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to bringing (in Jersey or elsewhere) proceedings against any person for an offence –
 - (i) in which the cash was used or intended to be used, or
 - (ii) in which, or from the proceeds of which, or in connection with which, the tainted cash was obtained.
- (4) More than one application may be made under paragraph (1) in relation to cash seized under this Law.

- (5) An application may only be made under paragraph (1) before the expiry of the authority for detention of the cash, whether detention is authorized under Article 5 or by a cash detention order.
- (6) A cash detention order –
 - (a) may only authorize the detention of the cash for a period not exceeding 3 months, beginning with the date of the order;
 - (b) shall not authorize the detention of the cash for an aggregate period of more than 2 years, beginning with the date of the first cash detention order made in relation to it.
- (7) A cash detention order shall provide for notice to be given to persons affected by it.

9 Forfeiture of seized cash

- (1) The Attorney General may apply to the Royal Court for an order to be made under paragraph (2) in relation to any cash that has been seized and detained under this Law.
- (2) The Royal Court shall, if it receives an application under paragraph (1) in relation to any cash seized and detained under this Law, make an order (a “forfeiture order”) forfeiting the cash, unless the person against whom the order would be made satisfies the court that the cash is not tainted cash.
- (3) Proceedings under this Article are civil proceedings.
- (4) An order may be made under this Article whether or not proceedings are brought against any person for an offence with which the cash in question is connected.
- (5) Any cash that is forfeited under a forfeiture order shall be paid into a special fund, within the meaning of the Public Finances (Jersey) Law 2005, that is designated by an Order made by the Minister for Treasury and Resources.

Extradition (Jersey) Law 2004**3 “Extradition offence” – persons not sentenced**

- (1) This Article applies to conduct of a person who –
 - (a) is accused in a designated territory of the commission of an offence constituted by the conduct but has not been convicted of the offence; or
 - (b) is alleged to be unlawfully at large after conviction by a court in a designated territory of an offence constituted by the conduct, and has not been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs in the designated territory;
 - (b) the conduct would constitute an offence under the law of Jersey, punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment, if it occurred in Jersey; and
 - (c) the conduct is so punishable under the law of the designated territory (however it is described in that law).
- (3) The conduct also constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs outside the designated territory;
 - (b) the conduct is punishable under the law of the designated territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law); and
 - (c) in corresponding circumstances, equivalent conduct would constitute an extra-territorial offence under the law of Jersey punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.
- (4) The conduct also constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs outside the designated territory and no part of it occurs in Jersey;
 - (b) the conduct would constitute an offence under the law of Jersey, punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment, if it occurred in Jersey; and
 - (c) the conduct is so punishable under the law of the designated territory (however it is described in that law).
- (5) The conduct also constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs outside the designated territory and no part of it occurs in Jersey;

- (b) the conduct is punishable under the law of the designated territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law); and
 - (c) the conduct constitutes or, if committed in Jersey, would constitute an offence to which paragraph (6) refers.
- (6) The offences to which this paragraph refers are –
- (a) an offence under section 51 or section 58 of the International Criminal Court Act 2001 (c.17) of the United Kingdom as it applies to Jersey (relating to genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 or section 59 of that Act (relating to conduct that is ancillary to those crimes and is committed outside the jurisdiction); and
 - (c) an ancillary offence, as defined in section 55 or section 62 of that Act, in relation to an offence to which either of sub-paragraphs (a) and (b) refers.

4 “Extradition offence” – persons sentenced

- (1) This Article applies to conduct of a person who –
 - (a) is alleged to be unlawfully at large after conviction, by a court in a designated territory, of the offence constituted by the conduct; and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs in the designated territory;
 - (b) the conduct would constitute an offence under the law of Jersey, punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment, if it occurred in Jersey; and
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.
- (3) The conduct also constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs outside the designated territory;
 - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct; and
 - (c) in corresponding circumstances, equivalent conduct would constitute an extra-territorial offence under the law of Jersey punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

- (4) The conduct also constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs outside the designated territory and no part of it occurs in Jersey;
 - (b) the conduct would constitute an offence under the law of Jersey, punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment, if it occurred in Jersey; and
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.
- (5) The conduct also constitutes an extradition offence in relation to the designated territory if –
 - (a) the conduct occurs outside the designated territory and no part of it occurs in Jersey;
 - (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct; and
 - (c) the conduct constitutes or, if committed in Jersey, would constitute an offence to which paragraph (6) refers.
- (6) The offences to which this paragraph refers are –
 - (a) an offence under section 51 or section 58 of the International Criminal Court Act 2001 (c.17) of the United Kingdom as it applies to Jersey (relating to genocide, crimes against humanity and war crimes);
 - (b) an offence under section 52 or section 59 of that Act (relating to conduct that is ancillary to those crimes and is committed outside the jurisdiction); and
 - (c) an ancillary offence, as defined in section 55 or section 62 of that Act, in relation to an offence to which either of sub-paragraphs (a) and (b) refers.

7 Extradition request and certificate

- (1) If the Attorney General receives a valid request for the extradition to a designated territory of a person who is in Jersey, the Attorney General shall issue a certificate under this Article.
- (2) However, paragraph (1) does not apply if the Attorney General decides under Article 65 that the request is not to be proceeded with.
- (3) A request for a person's extradition is valid if it contains a statement –
 - (a) that the person is accused in the designated territory of the commission of an offence specified in the request; or
 - (b) that the person is alleged to be unlawfully at large after conviction by a court in the designated territory of an offence specified in the request,

and the request is made in the approved way.

- (4) A request for extradition to a designated territory that is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the designated territory.
- (5) If the Hong Kong Special Administrative Region of the People's Republic of China is a designated territory, a request for extradition to it is made in the approved way if it is made by or on behalf of the government of the Region.
- (6) A request for extradition to any other designated territory is made in the approved way if it is made by –
 - (a) an authority of the designated territory whom the Attorney General believes to have the function of making requests for extradition in that designated territory; or
 - (b) a diplomatic or consular representative of the designated territory.
- (7) A certificate under this Article shall certify that the request is made in the approved way.
- (8) If a certificate is issued under this Article, the Attorney General shall send –
 - (a) the request; and
 - (b) the certificate,
 to the Magistrate.

16 Bars to extradition

- (1) If the Magistrate is to proceed under this Article, the Magistrate shall decide whether the person's extradition to the designated territory is barred by reason of –
 - (a) the rule against double jeopardy;
 - (b) extraneous considerations;
 - (c) the passage of time; or
 - (d) hostage-taking considerations.
- (2) The questions in paragraph (1) shall be determined in accordance with Articles 17 to 20 (inclusive).
- (3) If the Magistrate decides in the affirmative any of the questions in paragraph (1), the Magistrate shall order the person's discharge.
- (4) If the Magistrate decides each of those questions in the negative, and the person is accused of the commission of the extradition offence but it is not alleged that the person is unlawfully at large after conviction of the offence, the Magistrate shall proceed under Article 21 (relating to persons who, though accused, have not been convicted).
- (5) If the Magistrate decides each of those questions in the negative, and it is alleged that the person is unlawfully at large after conviction of the extradition offence,

the Magistrate shall proceed under Article 22 (relating to persons who have been convicted).

32 Specialty

- (1) The Attorney General shall not order a person's extradition to a designated territory if there are no specialty arrangements with that designated territory.
- (2) Paragraph (1) does not apply if before the case was sent to the Attorney General, the person had consented under Article 62 to being extradited.
- (3) There are specialty arrangements with a designated territory if (but only if) under the law of that designated territory or arrangements made between it and Jersey, a person who is extradited to the designated territory from Jersey may be dealt with in the designated territory for an offence committed before the person's extradition only where –
 - (a) the offence is one to which paragraph (4) refers; or
 - (b) the person is first given an opportunity to leave the designated territory.
- (4) The offences to which this paragraph refers are –
 - (a) the offence in respect of which the person is extradited;
 - (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
 - (c) an extradition offence in respect of which the Attorney General consents to the person's being dealt with; and
 - (d) an offence in respect of which the person waives the right that he or she would have had (but for this sub-paragraph) not to be dealt with for the offence.
- (5) Arrangements made with a designated territory that is a Commonwealth country or a British overseas territory may be made –
 - (a) for a particular case;
 - (b) for a particular class or particular classes of case; or
 - (c) generally, in respect of all cases.
- (6) A certificate issued by or under the authority of the Attorney General confirming the existence of arrangements with a designated territory that is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

109 Special extradition arrangements

- (1) This Article applies if the Attorney General believes –
 - (a) that arrangements have been made between the United Kingdom on behalf of Jersey, and another territory, for the extradition of a person from Jersey to the territory; and

- (b) the territory is not a designated territory.
- (2) The Attorney General may certify that the conditions in sub-paragraphs (a) and (b) of paragraph (1) are satisfied in relation to the extradition of the person.
- (3) If the Attorney General issues a certificate under paragraph (2), this Law shall apply in respect of the person's extradition to the territory as if it were a designated territory of the second category.
- (4) As applied by paragraph (3), this Law shall have effect –
 - (a) as if Articles 8(4), 10(5), 11(10)(b) and 21(1) were omitted; and
 - (b) with any other modifications specified in the certificate.
- (5) A certificate under paragraph (2) in relation to a person is conclusive evidence that the conditions in sub-paragraphs (a) and (b) of paragraph (1) are satisfied in relation to the person's extradition from Jersey to the territory.

Al Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002

Freezing of funds

- 8.-(1) Where the licensing authority have reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a listed person or a person acting on behalf of a listed person, it may by notice direct that those funds are not to be made available to any person, except under the authority of a licence granted under article 7.
- (2) A direction given under paragraph (1) shall specify either -
- (a) the period for which it is to have effect, or
 - (b) that the direction is to have effect until it is revoked by notice under paragraph (3).
- (3) The licensing authority may by notice revoke a direction given under paragraph (1) at any time.
- (4) The expiry or revocation of a direction shall not affect the application of article 7 in respect of the funds in question.
- (5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held ("the owner").
- (6) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.
- (7) Where a direction has been given by the licensing authority under paragraph (1), any person by, for or on behalf of whom those funds are held may apply by representation to the Royal Court for the direction to be set aside; and on such application the court may set aside the direction.
- (8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the licensing authority and, in Jersey, to the Attorney General (and to any other person by, for or on behalf of whom those funds are held), not later than seven days before the date fixed for the hearing of the application.
- (9) Any person who contravenes a direction under paragraph (1) is guilty of an offence.
- (10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence.

Terrorism (United Nations Measures) (Channel Islands) Order 2001

Freezing of funds on suspicion

6.-(1) Where the licensing authority has reasonable grounds for suspecting that the person by, for, or on behalf of whom any funds are held is or may be -

- (a) a person who commits, attempts to commit, participates in or facilitates the commission of terrorism,
- (b) a person controlled or owned directly or indirectly by a person referred to in subparagraph (a) above,
- (c) a person acting on behalf of, or at the direction of, a person referred to in subparagraph (a) above,

the licensing authority may by notice direct that those funds are not to be made available to that person, except under the authority of a licence granted under this article.

(2) A notice given under paragraph (1) shall specify either -

- (a) the period for which it is to have effect; or
- (b) that the direction is to have effect until it is revoked by notice under paragraph (3) below.

(3) The licensing authority may by notice revoke a direction given under paragraph (1) at any time.

(4) The expiry or revocation of a direction shall not affect the application of article 5 in respect of the funds in question.

(5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds in question ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held ("the owner").

(6) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(7) Any person who contravenes a direction under paragraph (1) above shall be guilty of an offence.

(8) A recipient who fails to comply with such a requirement as is mentioned in paragraph (6) shall be guilty of an offence.

Companies (Jersey) Law 1991

67 Registered office

- (1) A company shall at all times have a registered office in Jersey to which all communications and notices may be addressed.
- (2) On incorporation the situation of the company's registered office shall be that specified in the statement sent to the registrar under Article 7.
- (3) The company may change the situation of its registered office from time to time by giving notice to the registrar.
- (4) The change shall take effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.
- (5) For the purposes of any duty of a company –
 - (a) to keep at its registered office, or make available for public inspection there, any document; or
 - (b) to mention the address of its registered office in any document,
 a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.
- (6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in paragraph (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but –
 - (a) resumes performance of that duty at other premises as soon as practicable; and
 - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
 it shall not be treated as having failed to comply with that duty.
- (7) In proceedings for an offence of failing to comply with any such duty as is mentioned in paragraph (5), it is for the person charged to show that by reason of the matters referred to in that paragraph or paragraph (6) no offence was committed.

Control of Borrowing (Jersey) Order 1958

2 Admission to membership of Jersey body corporate

A body corporate incorporated under the law of Jersey shall not, without the consent of the Commission –

- (a) for any purpose issue any shares; or
- (b) admit any person to membership otherwise than by reason of the issue or transfer of shares.

12 Provisions as to consent of Commission

- (1) Any consent granted by the Commission under this Order –
 - (a) may be either general or special;
 - (b) may be revoked by the Commission;
 - (c) may be absolute or conditional; and
 - (d) may be limited so as to expire at the end of a specified period unless renewed.
- (2) Any consent granted by the Minister under the Control of Borrowing Order 1956, shall have effect as if it had been granted under the corresponding provision of this Order.

Non-Profit Organizations (Jersey) Law 2008**4 Obligation of NPOs to register**

Except as provided by Article 2, an NPO must be registered if –

- (a) it is established in Jersey; or
 - (b) it is administered in or from Jersey,
- whether or not it carries on any activity in Jersey.

17 Obligation of the Commission in respect of terrorism

- (1) It is an obligation of the Commission to help to determine if an NPO is assisting or being used to assist terrorism.
- (2) Accordingly, the Commission –
 - (a) must as soon as practicable after it receives an application for the registration of an NPO or a proposed NPO consider if it raises any suspicion that the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be;
 - (b) must as soon as practicable after it receives a financial statement from an NPO, consider if it raises any suspicion that the NPO is assisting or being used to assist terrorism; and
 - (c) may otherwise monitor the activities of each NPO.
- (3) If the Commission considers that an NPO is assisting or being used to assist terrorism, it must immediately inform the Attorney General, giving the Attorney General any evidence that the Commission has for its suspicions.



PROCEEDS OF CRIME (JERSEY) LAW 1999

Arrangement

Article

PART 1

INTRODUCTORY

- 1 Interpretation
- 2 Meanings of expressions relating to realisable property

PART 2

CONFISCATION ORDERS

- 3 Confiscation orders
- 4 Amount to be recovered under confiscation order
- 5 Confiscation order relating to a course of relevant criminal conduct
- 6 Postponed determinations
- 7 Statements relating to criminal offences
- 8 Provision of information by defendant
- 9 Powers of the Court where defendant has died or absconded
- 10 Effect of confiscation order on sentencing of absconder
- 11 Enforcement of confiscation orders
- 12 Reconsideration of case where Court has not considered a confiscation order
- 13 Reconsideration of determination that defendant has not benefited
- 14 Revised assessment of benefit already determined
- 15 Cases in which *saisies judiciaires* may be made
- 16 *Saisies judiciaires*
- 17 Realisation of property
- 18 Interest on sums unpaid under confiscation orders
- 19 Increase in realisable property
- 20 Application of proceeds of realisation and other sums

- 21 Variation of confiscation order where realisable property is inadequate
- 22 Bankruptcy of defendant
- 23 Limitation of liability of Viscount
- 24 Criminal Offences Confiscations Fund
- 25 Compensation where defendant not convicted
- 26 Cancellation of confiscation order, and compensation, where absconder acquitted
- 27 Cancellation of confiscation order, and compensation, where absconder returns
- 28 Variation of confiscation order, and compensation, where absconder returns
- 28A Enforcement of confiscation orders in a country or territory outside Jersey

PART 3

MONEY LAUNDERING

- 29 Restrictions on disclosure under this Part
- 30 Disclosure for purposes within Jersey
- 31 Disclosure for purposes outside Jersey
- 32 Assisting another to retain the benefit of criminal conduct
- 33 Acquisition, possession or use of proceeds of criminal conduct
- 34 Concealing or transferring proceeds of criminal conduct
- 34A Failure to disclose knowledge or suspicion of money laundering
- 34B Statutory defences
- 34C Cases to which Article 34A does not apply
- 34D Failure in a financial institution to report to police officer or nominated officer
- 35 Tipping-off
- 36 Financial services business
- 37 Procedures to prevent and detect money laundering

PART 4

EXTERNAL CONFISCATION ORDERS

- 38 Recognition of external confiscation orders
- 39 Registration of external confiscation orders

PART 5

MISCELLANEOUS

- 40 Investigations relating to proceeds of criminal conduct
- 41 Authority for search
- 41A Financial information and monitoring
- 42 Criminal liability of accessories
- 43 Orders

- 44 Rules of Court
- 45 Citation

SCHEDULE 1

OFFENCES FOR WHICH CONFISCATION ORDERS MAY BE MADE

SCHEDULE 2

FINANCIAL SERVICES BUSINESS

PART A

Business regulated by the Commission under regulatory laws

PART B

OTHER BUSINESS

- 1 Lawyers
- 2 Accountants
- 3 Estate agency services
- 4 Services provided by high value dealers
- 5 Casinos (including internet casinos)
- 6 Unregulated funds
- 7 Other services
- 8 The business of forming and administering legal persons or arrangements

SCHEDULE 3

FINANCIAL INFORMATION AND MONITORING ORDERS

PART 1

ORDERS FOR PROVISION OF FINANCIAL INFORMATION

- 1 Order to provide customer information
- 2 Who may apply for order
- 3 Who may make order
- 4 Consent required for application
- 5 Criteria for making order
- 6 Customer information
- 7 Self-incrimination

PART 2

ACCOUNT MONITORING ORDERS

- 1 Account monitoring orders
- 2 Applications
- 3 Discharge or variation
- 4 Effect of orders
- 5 Statements



MONEY LAUNDERING (JERSEY) ORDER 2008

Arrangement

Article

PART 1

INTRODUCTORY PROVISIONS

- 1 Interpretation
- 2 Beneficial ownership and control
- 3 Meaning of “customer due diligence measures”
- 4 Meaning of “one-off transaction”
- 5 Equivalent business
- 6 Designated police and customs officers
- 7 Compliance officer
- 8 Reporting officer
- 9 Designated persons
- 10 Exemptions from Articles 7 and 8
- 10A Financial services business carried on outside Jersey

PART 2

PREVENTION AND DETECTION OF MONEY LAUNDERING

- 11 Policies, procedures and training to prevent and detect money laundering
- 12 Exception from Article 11

PART 3

CUSTOMER DUE DILIGENCE MEASURES

- 13 Application and timing of customer due diligence measures
- 14 Termination where customer due diligence measures are not completed
- 15 Enhanced customer due diligence
- 16 Reliance on introducers and intermediaries
- 17 Reliance in certain circumstances where the intermediary is a regulated person
- 18 Exceptions from customer due diligence measures

PART 4

RECORD-KEEPING REQUIREMENTS

- A19 Interpretation of Part 4
- 19 Records to be kept
- 20 Periods for which records must be kept

PART 5

REPORTING AND DISCLOSURE

- 21 Reporting procedures and related disclosure requirements
- 22 Reports that need not be forwarded
- 22A Disclosure within the relevant person's organization
- 23 Duty to report evidence of money laundering

PART 5A

OTHER MEASURES

- 23A Shell banks
- 23B Anonymous accounts
- 23C Directions where the Financial Action Task Force applies counter- measures

PART 6

MISCELLANEOUS AND CLOSING

- 24 Citation and commencement
- 24A Application to certain businesses



MONEY LAUNDERING (JERSEY) ORDER 2008

THE MINISTER FOR TREASURY AND RESOURCES, in pursuance of Articles 37 and 43 of the Proceeds of Crime (Jersey) Law 1999, and having consulted the Jersey Financial Services Commission, orders as follows –

PART 1

INTRODUCTORY PROVISIONS

1 Interpretation

(1) In this Order, unless the context otherwise requires –

“branch” in respect of a relevant person, means a branch that is under the control of that relevant person;

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“compliance officer” means –

- (a) an individual appointed under paragraph (1) or (4) of Article 7; or
- (b) an individual described in Article 7(2);

“customer due diligence measures” means the measures described in Article 3(1);

“designated customs officer” means an officer of the Impôts who is designated under Article 6(2) or, if no one is for the time being designated, the Agent of the Impôts;

“designated person” means an individual who is designated under Article 9;

“designated police officer” means a police officer who is designated under Article 6(1) or, if no one is for the time being designated, the Chief Officer of the States of Jersey Police Force;

“designated supervisory body” means a supervisory body designated under Article 6 of the Proceeds of Crime (Supervisory Bodies) Law;

“Drug Trafficking Offences Law” means the Drug Trafficking Offences (Jersey) Law 1988;

“enhanced customer due diligence measures” has the meaning in Article 15(2);

“equivalent business” has the meaning in Article 5;

“FATF recommendations” means the Forty Recommendations (incorporating the amendments of 22nd October 2004) of the international body known as the Financial Action Task Force on Money Laundering;

“identification measures” means those measures described in Article 3(2);

“insurance business” means any insurance business to which Article 5 of the Insurance Business (Jersey) Law 1996 applies;

“intermediary” has the meaning in Article 16(6);

“introducer” has the meaning in Article 16(6);

“Jersey body corporate” means a body that is incorporated in Jersey;

“Jersey limited liability partnership” means a limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 1997;

“Law” means the Proceeds of Crime (Jersey) Law 1999;

“one-off transaction” has the meaning in Article 4;

“on-going monitoring” has the meaning in Article 3(3);

“overseas regulatory authority”, in respect of a country or territory outside Jersey, means an authority discharging in that country or territory a function that is the same or similar to a function of the Commission in respect of the prevention and detection of money laundering;

“Proceeds of Crime (Supervisory Bodies) Law” means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;

“public authority” means a person holding a public office in Jersey;

“public notice” means a notice published in the Jersey Gazette, or a notice whose contents are brought to the attention of the public by the taking of other reasonable steps for that purpose;

“regulated business” means a financial services business in respect of which a person –

- (a) is registered under the Banking Business (Jersey) Law 1991;
- (b) holds a permit or is a certificate holder under the Collective Investment Funds (Jersey) Law 1988;
- (c) is registered under the Financial Services (Jersey) Law 1998; or
- (d) is authorized by a permit under the Insurance Business (Jersey) Law 1996;

“regulated person” means a person carrying on a regulated business;

“relevant person” means –

- (a) a person carrying on a financial services business in or from within Jersey;
or
- (b) either –
 - (i) a Jersey body corporate, or
 - (ii) a Jersey limited liability partnership,
carrying on a financial services business in any part of the world;

“reporting officer” means an individual who is appointed under Article 8(1) or (3);

“secondary recipient” means any person to whom information has been passed by the Commission or a designated supervisory body;

“sole trader” means an individual carrying on a financial services business, who does not in the course of doing so –

- (a) employ any other person; or
- (b) act in association with any other person;

“source of the funds” means the source of the funds that are used or to be used in a business relationship or a one-off transaction;

“subsidiary” has the same meaning as in Article 2 of the Companies (Jersey) Law 1991.

“Terrorism Law” means the Terrorism (Jersey) Law 2002.

(2) In this Order –

- (a) a reference to a document, information or record, or to anything else in writing, includes a reference to a document, information, record or writing in electronic form; and
- (b) a reference to any amount that is expressed in sterling or euros includes a reference to an equivalent amount in any other currency.

2 Beneficial ownership and control

- (1) For the purposes of this Order, each of the following individuals is a beneficial owner or controller of a person (“other person”) where that other person is not an individual –
 - (a) an individual who is an ultimate beneficial owner of that other person (whether or not the individual is its only ultimate beneficial owner); and
 - (b) an individual who ultimately controls or otherwise exercises control over the management of that other person (whether the individual does so alone or with any other person or persons).
- (2) For the purposes of paragraph (1) it is immaterial whether an individual’s ultimate ownership or control is direct or indirect.
- (3) No individual is to be treated by reason of this Article as a beneficial owner of a person that is a body corporate the securities of which are listed on a regulated market.
- (4) In determining whether an individual is a beneficial owner or controller of another person, regard must be had to all the circumstances of the case, in particular the size of an individual’s beneficial ownership or degree of control having regard to the risk of that individual or that other person being involved in money laundering.
- (5) For the purposes of this Article, “regulated market” has the same meaning as in the Money Laundering Regulations 2007 S.I. 2007/2157 of the United Kingdom.

3 Meaning of “customer due diligence measures”

- (1) “Customer due diligence measures” means, in respect of the customers of a relevant person’s financial services business, identification measures and on-going monitoring.
- (2) Identification measures are measures for –
 - (a) identifying the customer;
 - (b) determining whether the customer is acting for a third party and, if so –
 - (i) identifying that third party,
 - (ii) where the third party is not an individual, understanding the ownership and control of that third party,
 - (iii) where clause (ii) applies, identifying each individual who is that third party’s beneficial owner or controller;
 - (c) in respect of a customer that is not an individual –
 - (i) identifying any person purporting to act on behalf of the customer and verifying the authority of any person purporting so to act,

- (ii) understanding the ownership and control structure of that customer and the provisions under which the customer can enter into legal arrangements, and
 - (iii) identifying the individuals who are the customer's beneficial owners or controllers;
- (d) obtaining information on the purpose and intended nature of the business relationship or one-off transaction.
- (3) On-going monitoring means –
 - (a) scrutinizing transactions undertaken throughout the course of a business relationship to ensure that the transactions being conducted are consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile (such scrutiny to include, where necessary, the source of the funds); and
 - (b) ensuring that documents, data or information obtained under identification measures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of the scrutiny described in sub-paragraph (a).
- (4) For the purposes of paragraph (2), identification of a person means –
 - (a) finding out the identity of that person, including that person's name and legal status; and
 - (b) obtaining evidence, on the basis of documents, data or information from a reliable and independent source, that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies the person responsible for the identification of a person that the evidence does establish that fact.
- (5) For the purposes of paragraph (2), the measures must include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve money laundering, including obtaining appropriate information for assessing that risk.
- (6) For the purposes of paragraph (2)(b) and (c), measures for obtaining evidence must involve reasonable measures having regard to all the circumstances of the case, including the degree of risk assessed.

4 Meaning of “one-off transaction”

- (1) For the purposes of this Order, a “one-off transaction” means –
 - (a) a transaction (other than in respect of a money service business or operating a casino) amounting to not less than 15,000 euros;

- (b) 2 or more transactions (other than in respect of a money service business or operating a casino) –
 - (i) where it appears at the outset to any person handling any of the transactions that the transactions are linked and that the total amount of those transactions is not less than 15,000 euros, or
 - (ii) where at any later stage it comes to the attention of any person handling any of those transactions that clause (i) is satisfied;
 - (c) a transaction carried out in the course of a money service business amounting to not less than 1,000 euros;
 - (d) 2 or more transactions carried out in the course of a money service business –
 - (i) where it appears at the outset to any person handling any of the transactions that those transactions are linked and that the total amount of those transactions is not less than 1,000 euros, or
 - (ii) where at any later stage it comes to the attention of any person handling any of those transactions that clause (i) is satisfied;
 - (e) a transaction amounting to not less than 3,000 euros carried out in the course of operating a casino; or
 - (f) 2 or more transactions carried out in the course of operating a casino –
 - (i) where it appears at the outset to any person handling any of the transactions that those transactions are linked and that the total amount of those transactions is not less than 3,000 euros, or
 - (ii) where at any later stage it comes to the attention of any person handling any of those transactions that clause (i) is satisfied.
- (2) In this Article –
- (a) “transaction” means a transaction other than one carried out during a business relationship; and
 - (b) “money service business” has the same meaning as in Article 1(1) of the Financial Services (Jersey) Law 1998.

5 Equivalent business

For the purposes of this Order, business (“other business”) is equivalent business in relation to any category of financial services business carried on in Jersey if –

- (a) the other business is carried on in a country or territory other than Jersey;
- (b) if carried on in Jersey, it would be financial services business of that category (whether or not it is called by the same name in Jersey);

- (c) in that other country or territory, the business may only be carried on by a person registered or otherwise authorized for that purpose under the law of that country or territory;
- (d) the conduct of the business is subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF recommendations in respect of that business; and
- (e) the conduct of the business is supervised, for compliance with the requirements to which paragraph (d) refers, by an overseas regulatory authority.

6 Designated police and customs officers

- (1) The Chief Officer of the States of Jersey Police Force may by public notice designate one or more police officers (whether by reference to the name of the officer or officers or post), being members of that Force, for the purposes of this Order.
- (2) The Agent of the Impôts may by public notice designate one or more officers of the Impôts for the purposes of this Order.

7 Compliance officer

- (1) A relevant person (other than a sole trader) must appoint an individual as the compliance officer in respect of the financial services business being carried on by the relevant person.
- (2) A sole trader is the compliance officer in respect of his or her financial services business.
- (2A) A relevant person must ensure that –
 - (a) the individual appointed as compliance officer under this Article is of an appropriate level of seniority; and
 - (b) such compliance officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a compliance officer.
- (3) The compliance officer's function is to monitor whether the enactments in Jersey relating to money laundering and any relevant Code of Practice issued under Article 22 of the Proceeds of Crime (Supervisory Bodies) Law are being complied with in the conduct of the relevant person's financial services business.
- (4) When a named individual has ceased to be the compliance officer, the relevant person must appoint another individual forthwith as compliance officer in respect of the financial services business being carried on by the relevant person.

- (5) In the case of an individual appointed under paragraph (1) or (4), the compliance officer is responsible to the relevant person.
- (6) Subject to paragraph (9), a relevant person must give the Commission written notice within one month after the date –
 - (a) an appointment under paragraph (1) or (4) takes effect; or
 - (b) an individual ceases to be the compliance officer.
- (7) The notice is to specify the name of that compliance officer and the date on which his or her appointment takes effect or he or she ceases to be the compliance officer.
- (8) A compliance officer may also be appointed as a reporting officer.
- (9) Paragraphs (10) and (11) apply where a relevant person is a regulated person and the Commission has been notified in respect of that relevant person's regulated business pursuant to another enactment of the name of a person who has acquired, is to acquire, or ceased to have, the function described in paragraph (3) ("notified person").
- (10) The notified person shall be deemed to have been appointed under this Article and the relevant person will be deemed to have complied with paragraph (6).
- (11) Where the Commission has objected to the notified person under that other enactment mentioned in paragraph (9) –
 - (a) the notified person shall be deemed to have ceased being the compliance officer under this Article from the date that the objection took effect under that other enactment (whether or not his or her appointment as compliance officer took effect); and
 - (b) the relevant person shall be deemed to have complied with paragraph (6) in the case described in sub-paragraph (b).
- (12) The requirement in paragraph (1) applies in respect of any financial services business carried on by the relevant person on or after 1st April 2008.

8 Reporting officer

- (1) A relevant person (other than a sole trader) must appoint an individual as the reporting officer in respect of the financial services business being carried on by the relevant person.
- (2) The reporting officer's function is to receive and consider reports in accordance with Article 21.
- (2A) A relevant person must ensure that –

- (a) the individual appointed as reporting officer under this Article is of an appropriate level of seniority; and
 - (b) such reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a reporting officer.
- (3) When a named individual has ceased to be the reporting officer, the relevant person must appoint another individual forthwith as the reporting officer in respect of the financial services business being carried on by the relevant person.
- (4) Subject to paragraph (7), a relevant person must give the Commission written notice, within one month after the date –
 - (a) an appointment under paragraph (1) or (3) takes effect; or
 - (b) a person ceases to be the reporting officer.
- (5) The notice is to specify the name of that reporting officer and the date on which his or her appointment takes effect or he or she ceases to be the reporting officer.
- (6) A reporting officer may also be appointed as a compliance officer.
- (7) Paragraphs (8) and (9) apply where a relevant person is a regulated person and the Commission has been notified in respect of that relevant person's regulated business pursuant to another enactment of the name of a person who has acquired, is to acquire, or ceased to have, the function described in paragraph (2) ("notified person").
- (8) The notified person shall be deemed to have been appointed under this Article and the relevant person will be deemed to have complied with paragraph (4).
- (9) Where the Commission has objected to the notified person under that other enactment –
 - (a) the notified person shall be deemed to have ceased being the reporting officer under this Article from the date that the objection took effect under that other enactment (whether or not his or her appointment as reporting officer took effect); and
 - (b) the relevant person shall be deemed to have complied with paragraph (4) in the case described in sub-paragraph (b).

9 Designated persons

- (1) A relevant person may designate one or more individuals (other than the reporting officer) to whom reports may be made in the first instance, for onward transmission, where required under this Order, to the reporting officer.
- (2) A relevant person must ensure that –
 - (a) a designated person is of an appropriate level of seniority; and

- (b) a designated person has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a designated person.

10 Exemptions from Articles 7 and 8

- (1) The Commission may by public notice exempt a relevant person or any class or description of relevant person carrying on any class of financial services business from the obligation in Article 7(6) or from the obligation in Article 8(4).
- (2) The Commission may by public notice revoke any such exemption from a date specified in the notice.
- (3) The date to be specified must allow a reasonable period of time for compliance with the obligation to which the exemption relates.

10A Financial services business carried on outside Jersey

- (1) This Article applies to financial services business carried on in a country or territory outside Jersey.
- (2) Subject to the provisions of this Article, a relevant person who falls within paragraph (b) of the definition “relevant person” must –
 - (a) comply with the requirements of this Order in respect of any financial services business to which this Article applies carried on by the relevant person;
 - (b) ensure that any subsidiary of that relevant person applies measures that are at least equivalent to the requirements of this Order in respect of any financial services business to which this Article applies carried on by that subsidiary.
- (3) Subject to the provisions of this Article, a relevant person to whom paragraph (5) applies must apply measures that are at least equivalent to the requirements of this Order in respect of any financial services business to which this Article applies carried on by any branch.
- (4) Subject to the provisions of this Article, a relevant person to whom paragraph (5) applies must ensure that any subsidiary of that relevant person applies measures that are at least equivalent to the requirements of this Order in respect of any financial services business to which this Article applies carried on by that subsidiary.
- (5) This paragraph applies to a relevant person who falls within paragraph (a) of the definition “relevant person” and who does not fall within paragraph (b) of that definition.

- (6) A relevant person need not comply with paragraphs (2), (3) and (4) to the extent that the law of the country or territory in which that person carries on a financial services business, or has a subsidiary carrying on such a business, has the effect of prohibiting compliance with those paragraphs.
- (7) Where paragraph (6) applies, the relevant person must inform the supervisory body exercising supervisory functions in relation to that relevant person under the Proceeds of Crime (Supervisory Bodies) Law.
- (8) Where paragraph (6) applies, to the extent that the law of the country or territory concerned does not have the effect of prohibiting or preventing the relevant person from taking other reasonable steps to deal effectively with the risk of money laundering, the relevant person must take those reasonable steps.
- (9) A relevant person need not comply with paragraphs (2), (3) and (4) in a country or territory outside Jersey in respect of any financial services business that falls within paragraphs 1 to 5 of Part B of Schedule 2 of the Law.
- (10) If, in a country or territory outside Jersey –
 - (a) a relevant person carries on a financial services business or has a subsidiary carrying on such a business; and
 - (b) that country or territory has more stringent requirements than those set out in this Order,
 the relevant person must ensure that those more stringent requirements are complied with.

PART 2

PREVENTION AND DETECTION OF MONEY LAUNDERING

11 Policies, procedures and training to prevent and detect money laundering

- (1) A relevant person must maintain appropriate policies and procedures relating to –
 - (a) customer due diligence measures;
 - (b) reporting;
 - (c) record-keeping;
 - (d) screening of employees;
 - (e) internal control;
 - (f) risk assessment and management; and
 - (g) the monitoring and management of compliance with, and the internal communication of, such policies and procedures,

in respect of that person's financial services business in order to prevent and detect money laundering.

- (2) For the purposes of paragraph (1), "appropriate policies and procedures" means policies and procedures that are appropriate having regard to the degree of risk of money laundering taking into account the type of customers, business relationships, products or transactions with which the relevant person's business is concerned.
- (3) The policies and procedures referred to in paragraph (2) must include policies and procedures for –
 - (a) the identification and scrutiny of –
 - (i) complex or unusually large transactions,
 - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose, and
 - (iii) any other activity which the relevant person regards as particularly likely by its nature to be related to the risk of money laundering;
 - (b) the taking of additional measures, where appropriate, to prevent the use for money laundering of products and transactions which are susceptible to anonymity;
 - (c) determining whether –
 - (i) a customer,
 - (ii) a beneficial owner or controller of a customer,
 - (iii) a third party for whom a customer is acting,
 - (iv) a beneficial owner or controller of a third party described in clause (iii),
 - (v) a person acting, or purporting to act, on behalf of a customer, is a politically exposed person;
 - (d) determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations;
 - (e) determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering, such measures being imposed by one or more countries or sanctioned by the European Union or the United Nations;
 - (f) assessing the risk referred to in Article 13(4)(b).

- (3A) For the purposes of paragraph (3)(a) “scrutiny” includes scrutinising the background and purpose of transactions and activities.
- (4) For the purposes of this Article “transaction” means any of the following –
 - (a) a one-off transaction;
 - (b) transactions within a one-off transaction; and
 - (c) transactions within a business relationship.
- (5) In this Article “politically exposed person” has the same meaning as in Article 15(6).
- (6)
- (7)
- (8) A relevant person with any subsidiary or branch that carries on a financial services business must communicate to that subsidiary or branch that person’s policies and procedures for complying with paragraph (1).
- (9) A relevant person must take appropriate measures from time to time for the purposes of making employees whose duties relate to the provision of financial services business aware of the following things –
 - (a) the policies and procedures under paragraph (1) that are maintained by that person and relate to the business; and
 - (b) the enactments in Jersey relating to money laundering and any relevant Code of Practice issued under Article 22 of the Proceeds of Crime (Supervisory Bodies) Law.
- (10) A relevant person must provide those employees from time to time with training in the recognition and handling of –
 - (a) transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering; and
 - (b) other conduct that indicates that a person is or appears to be engaged in money laundering.
- (10A) For the purposes of paragraph (10), such training shall include the provision of information on current money laundering techniques, methods and trends.
- (11) A relevant person must maintain adequate procedures for monitoring and testing the effectiveness of the following actions –
 - (a) the policies and procedures maintained under paragraph (1);
 - (b) the measures taken under paragraph (9); and
 - (c) the training provided under paragraph (10).

12 Exception from Article 11

A sole trader need not maintain policies and procedures relating to internal reporting, screening of employees and the internal communication of such policies and procedures.

PART 3

CUSTOMER DUE DILIGENCE MEASURES

13 Application and timing of customer due diligence measures

(1) A relevant person must apply –

- (a) subject to paragraph (4) or (5), identification measures before the establishment of a business relationship or before carrying out a one-off transaction;
- (b) on-going monitoring during a business relationship;
- (c) identification measures where –
 - (i) the relevant person suspects money laundering, or
 - (ii) the relevant person has doubts about the veracity or adequacy of documents, data or information previously obtained under the customer due diligence measures.

(2) Where –

- (a) a relevant person has a business relationship with a customer that started before 4th February 2008; or
- (b) the relevant person carries on a business falling within any class of business described in Schedule 2 to the Law on or after 19th February 2008 and each of the conditions in paragraph (2A) applies,

the relevant person must apply customer due diligence measures, as modified by paragraph (2B) in respect of on-going monitoring, to that relationship at appropriate times on or after 1st April 2008.

(2A) For the purposes of paragraph (2)(b) the conditions are that –

- (a) the business carried on by the relevant person did not fall within that Schedule before that date;
- (b) the relevant person has a business relationship with a customer within the course of that business;
- (c) that business relationship started before 19th February 2008.

(2B) For the purposes of paragraph (2), on-going monitoring shall mean –

- (a) the scrutiny described in Article 3(3)(a); and
- (b) ensuring that documents, data or information –
 - (i) obtained under identification measures, or
 - (ii) (if applicable) obtained under identification measures –
 - (A) maintained under the Money Laundering (Jersey) Order 1999 immediately before 4th February 2008, and
 - (B) held immediately before 19th February 2008,
 are kept up to date and relevant by undertaking reviews of existing records, including, but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of applying the scrutiny described in Article 3(3)(a).
- (3) For the purposes of paragraph (2), “appropriate times” means –
 - (a) for the application of identification measures –
 - (i) times that are appropriate having regard to the degree of risk of money laundering taking into account the type of customer, business relationship, product or transaction concerned, and
 - (ii) times when the circumstance described in paragraph (1)(c)(i) applies;
 - (b) for the application of on-going monitoring, throughout the business relationship as described in Article 3(3).
- (4) Identification of a person that is described in Article 3(4)(b) may be completed as soon as reasonably practicable after the establishment of a business relationship if –
 - (a) that is necessary not to interrupt the normal conduct of business; and
 - (b) there is little risk of money laundering occurring as a result of completing such identification after the establishment of that relationship.
- (5) Where a relevant person carries out a one-off transaction to which Article 4(1)(b)(ii), Article 4(1)(d)(ii) or Article 4(1)(f)(ii) applies, that person must apply identification measures as soon as reasonably practicable.

14 Termination where customer due diligence measures are not completed

- (1) If a relevant person is unable to apply the identification measures before the establishment of a business relationship or before the carrying out of a one-off transaction to the extent specified in Article 13(1)(a), that person shall not establish that business relationship or carry out that one-off transaction.
- (2) If a relevant person is unable to apply the identification measures to the extent that they involve identification of a person in the circumstances described in

Article 13(4) after the establishment of a business relationship, that person shall terminate that relationship.

- (3) If a relevant person is unable to comply with Article 13(1)(b) in respect of a business relationship, that person shall terminate that relationship.
- (4) If a relevant person is unable to comply with Article 13(5) in respect of a one-off transaction, that person shall not complete or carry out any further linked transactions in respect of that one-off transaction.
- (5) Subject to paragraph (6), if a relevant person is unable to apply the identification measures in the cases described in Article 13(1)(c) in respect of any business relationship or transaction with a person (“transaction” having the meaning in paragraph (12)) the relevant person shall not establish or shall terminate that business relationship or shall not complete or carry out that transaction, as the case requires.
- (6) The relevant person need not apply the identification measures in the case described in Article 13(1)(c)(i) in respect of any business relationship or transaction (“transaction” having the meaning in paragraph (12)) with a person if the relevant person, having made a report under procedures maintained under Article 21 to a designated police officer or a designated customs officer and acting with the consent of that officer –
 - (a) does not complete that transaction;
 - (b) does not carry out that transaction;
 - (c) does not establish that business relationship; or
 - (d) terminates that business relationship,
 as the case requires.
- (7) Subject to paragraph (6), if a relevant person is unable to apply the identification measures at any appropriate time described in Article 13(3)(a) for the purposes of Article 13(2) in respect of a business relationship that person shall terminate that relationship.
- (8) Where paragraph (1), (2), (3), (4), (5) or (7) applies a relevant person must consider whether to make a report under Part 5.
- (9) Subject to paragraph (10), paragraphs (1) to (5) and (7) do not apply where the relevant person is a person whose business falls within paragraph 1 or 2 of Part B of Schedule 2 to the Law and is in the course of ascertaining the legal position for that person’s client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.
- (10) In paragraph (9), the relevant person must be a member of a professional body which –

- (a) is established for persons carrying on business falling within paragraph 1 or 2 of Part B of Schedule 2 to the Law and which makes provision for –
 - (i) testing the competence of those seeking admission to membership of such a body as a condition for such admission, and
 - (ii) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards; and
 - (b) is established in respect of the business in the course of which the relevant person carries out the activities described in paragraph (9).
- (11) If a report is made under procedures maintained under Article 21 to a designated police officer or designated customs officer, paragraphs (1), (2), (3), (4), (5) and (7) do not apply to the extent that the relevant person is acting with the consent of that officer.
- (12) For the purposes of this Article, “transaction” means any transaction other than one carried out in the course of a business relationship, whether or not it is a one-off transaction or a transaction that falls within Article 4(1)(b), (d) or (f).

15 Enhanced customer due diligence

- (1) A relevant person must apply on a risk-sensitive basis –
 - (a) enhanced customer due diligence measures where paragraphs (3) to (5) apply; and
 - (b) enhanced customer due diligence measures in any situation which by its nature can present a higher risk of money laundering.
- (2) For the purposes of this Order “enhanced customer due diligence measures” means customer due diligence measures that involve specific and adequate measures to compensate for the higher risk of money laundering.
- (3) This paragraph applies where the customer has not been physically present for identification purposes.
- (3A) This paragraph applies where a relevant person has, or proposes to have, a business relationship with, or proposes to carry out a one-off transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations.
- (4) This paragraph applies where a relevant person to whom paragraph 4(A) applies has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside Jersey.

- (4A) This paragraph applies to a relevant person who carries on a deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991 except the doing of anything by or on behalf of –
- (a) the States;
 - (b) the central bank of a member State of the European Community; or
 - (c) the National Savings Bank of the United Kingdom.
- (4B) Where paragraph (4) applies, the specific and adequate measures that are referred to in paragraph (2) shall include –
- (a) gathering sufficient information about the institution to understand fully the nature of its business;
 - (b) determining the reputation of the institution and the quality of its supervision, including whether it has been subject to any money laundering investigation or regulatory action;
 - (c) assessing the institution's systems and controls to combat money laundering in order to determine whether they are consistent with the requirements of the FATF recommendations and their effectiveness;
 - (d) requiring any new relationship to be approved by the senior management of the relevant person;
 - (e) recording the respective responsibilities of the relevant person and the institution to prevent and detect money laundering so that both parties clearly understand those responsibilities;
 - (f) being satisfied that, in respect of customers of the institution who have services provided directly by the relevant person, that the institution has applied customer due diligence measures at least equivalent to those set out in this Order and is able to provide a copy, at the request of the relevant person, of the evidence, documents, data and information obtained when applying such measures.
- (5) This paragraph applies where –
- (a) a relevant person has or proposes to have a business relationship with a politically exposed person or proposes to carry out a one-off transaction with such a person; or
 - (b) any of the following is a politically exposed person –
 - (i) a beneficial owner or controller of the customer,
 - (ii) a third party for whom a customer is acting,
 - (iii) a beneficial owner or controller of a third party described in clause (ii),
 - (iv) a person acting, or purporting to act, on behalf of the customer.

- (5A) Where paragraph (5) applies, the specific and adequate measures that are referred to in paragraph (2) must include –
- (a) requiring any new business relationship or continuation of such a relationship or any new one-off transaction to be approved by the senior management of the relevant person; and
 - (b) measures to establish the source of the wealth of the politically exposed person and source of the funds involved in the business relationship or one-off transaction.
- (5B) In paragraph (5A)(b) “source of the wealth” means the source generating the total net worth of funds of the politically exposed person, whether or not those funds are used in the business relationship or one-off transaction.
- (6) In paragraph (5), a “politically exposed person” means a person who is –
- (a) an individual who is or has been entrusted with a prominent public function in a country or territory outside Jersey or by an international organization outside Jersey, for example –
 - (i) heads of state, heads of government, senior politicians,
 - (ii) senior government, judicial or military officials,
 - (iii) senior executives of state owned corporations,
 - (iv) important political party officials;
 - (b) an immediate family member of a person mentioned in sub-paragraph (a), including any of the following –
 - (i) a spouse,
 - (ii) a partner, that is someone considered by his or her national law as equivalent or broadly equivalent to a spouse,
 - (iii) children and their spouses or partners as defined in clause (ii),
 - (iv) parents,
 - (v) grandparents and grandchildren,
 - (vi) siblings;
 - (c) close associates of a person mentioned in sub-paragraph (a), including any person who is known to maintain a close business relationship with such a person, including a person who is in a position to conduct substantial financial transactions on his or her behalf.
- (7) For the purpose of deciding whether a person is a close associate of a person referred to in paragraph (6)(a), a relevant person need only have regard to information which is in that person’s possession or is publicly known.

16 Reliance on introducers and intermediaries

- (1) Provided the conditions in paragraph (4) are met, a relevant person may, if that person thinks fit, rely on an intermediary or introducer (each referred to as “the other person”) to apply the identification measures specified in paragraph (2) or (3) in respect of that other person’s customers and the persons to which paragraph (5) applies in order to meet the relevant person’s obligation under Article 13 to apply those specified identification measures provided that –
 - (a) the other person consents to being relied on; and
 - (b) notwithstanding the relevant person’s reliance on the other person, the relevant person remains liable for any failure to apply such measures.
- (2) Where the relevant person relies on an intermediary, the identification measures are the ones described in Article 3(2)(b).
- (3) Where the relevant person relies on an introducer, the identification measures are the ones described in Article 3(2)(a) to (c).
- (4) The conditions mentioned in paragraph (1) are that –
 - (a) the relevant person knows or has reasonable grounds for believing that the other person is –
 - (i) a relevant person in respect of which the Commission discharges supervisory functions in respect of that other person’s financial services business, or
 - (ii) a person who carries on equivalent business;
 - (b) the relevant person obtains adequate assurance in writing from the other person that –
 - (i) the other person has applied the identification measures mentioned in paragraph (1),
 - (ii) the other person is required to keep and does keep evidence of the identification, as described in Article 3(4), relating to each of the other person’s customers and a record of such evidence,
 - (iii) the other person will keep the evidence described in clause (ii) and will provide a copy of that evidence without delay to the relevant person at the relevant person’s request;
 - (c) where the other person is an introducer, the relevant person obtains, in writing –
 - (i) confirmation that each customer described in paragraph (1) is an established customer of that other person, and
 - (ii) sufficient information about each customer described in paragraph (1) to enable the relevant person to assess the risk of money laundering involving that customer; and

- (d) where the other person is an intermediary, the relevant person obtains in writing sufficient information about the customers for whom the intermediary is acting to enable the relevant person to assess the risk of money laundering involving that customer.
- (5) This paragraph applies to any of the following –
 - (a) any beneficial owner or controller of the customer;
 - (b) any third party for whom the customer is acting;
 - (c) any beneficial owner or controller of a third party for whom the customer is acting; or
 - (d) any person purporting to act on behalf of a customer.
- (6) In this Order –
 - (a) an intermediary is a person who has or seeks to establish a business relationship or to carry out a one-off transaction on behalf of that person's customer with a relevant person so that the intermediary becomes a customer of the relevant person;
 - (b) an introducer is a person who has a business relationship with a customer and who introduces that customer to a relevant person with the intention that the customer will form a business relationship or conduct a one-off transaction with the relevant person so that the introducer's customer also becomes a customer of the relevant person.
- (7) For the purposes of paragraph (4), assurance is adequate if –
 - (a) it is reasonably capable of being regarded as reliable; and
 - (b) the person who relies on it is satisfied that it is reliable.
- (8) Nothing in this Article shall apply in the circumstances falling within Article 13(1)(c)(i).

17 Reliance in certain circumstances where the intermediary is a regulated person

- (1) This Article applies where a relevant person knows or has reasonable grounds for believing that an intermediary is –
 - (a) a regulated person; or
 - (b) a person who carries on equivalent business to any category of regulated business.
- (2) Where this Article applies, the relevant person need not, if that person thinks fit, comply with the obligation under Article 13 to apply the identification measures specified in Article 3(2)(b) in respect of the customers of the intermediary's business if –

- (a) in respect of that business, the intermediary falls within paragraph (a), (b) or (d) in the definition of “regulated business”;
 - (b) that business is investment business or fund services business which the intermediary is registered to carry on under the Financial Services (Jersey) Law 1998; or
 - (c) that business is equivalent business to any category of business described in sub-paragraph (a) or (b).
- (3) Nothing in this Article shall apply in the circumstances falling within Article 13(1)(c)(i).

18 Exceptions from customer due diligence measures

- (1) Identification measures under Article 13 are not required in any of Cases A to F.
- (2) Case A is where the customer of the relevant person is a public authority, and is acting in that capacity.
- (3) Case B is where the business relationship or one-off transaction relates to a pension, superannuation or similar scheme and where the contributions to the scheme are made by an employer or by way of deductions from wages and the rules of the scheme do not permit the assignment of an interest of a member of the scheme under the scheme.
- (4) Case C is where, in the case of insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person’s contract of employment or occupation –
 - (a) the policy contains no surrender clause; and
 - (b) it may not be used as collateral security for a loan.
- (5) Case D is where, in respect of insurance business, a premium is payable in one instalment of an amount not exceeding £1,750.
- (6) Case E is where, in respect of insurance business, a periodic premium is payable and the total amount payable in respect of any calendar year does not exceed £750.
- (6A) Case F is where the customer of a relevant person is a body corporate the securities of which are listed on a regulated market where “regulated market” has the same meaning as in Article 2(5).
- (7) Where the customer of a relevant person is –
 - (a) a regulated person; or
 - (b) a person who carries on equivalent business to any category of regulated business,

the relevant person need not comply with his or her obligations under Article 13 in respect of those measures mentioned in sub-paragraphs (a) and (c) of Article 3(2).

(8) Where –

- (a) a person is authorized to act on behalf of a customer;
- (b) the customer is not a relevant person;
- (c) the person who is so authorized acts on behalf of the customer in the course of employment by a person carrying on a financial services business; and
- (d) the financial services business is either a regulated business or equivalent business to a regulated business,

the relevant person need not comply with his or her obligations under Article 13 in respect of the measures mentioned in Article 3(2)(c)(i).

- (8A) Where a relevant person's business falls within paragraph 1 or 3 of Part B of Schedule 2 to the Law and that person enters into a business relationship or carries out a one-off transaction for the purpose of enabling a customer directly or indirectly to enter into a registered contract within the meaning of the Housing (Jersey) Law 1949, the relevant person need not comply with his or her obligations under Article 13 to apply customer due diligence measures to the extent that such measures require identification of a person within the meaning of Article 3(4)(b).
- (9) Nothing in this Article shall apply in the circumstances falling within Article 13(1)(c)(i) and 15(1)(b).

PART 4

RECORD-KEEPING REQUIREMENTS

A19 Interpretation of Part 4

In this Part “relevant person” includes a person who was formerly a relevant person.

19 Records to be kept

- (1) A relevant person must keep the records specified in paragraphs (2) and (2A).
- (2) This paragraph refers to –
 - (a) a record comprising –
 - (i) a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or information that enables a copy of such evidence to be obtained, and

- (ii) all the supporting documents, data or information that have been obtained in respect of a business relationship or one-off transaction following the application of customer due diligence measures;
 - (b) a record containing details relating to each transaction carried out by the relevant person in the course of any business relationship or one-off transaction.
- (2A) This paragraph refers to the records, if any, that –
- (a) the relevant person was required to keep immediately before 4th February 2008 under record keeping procedures maintained under Article 8 of the Money Laundering (Jersey) Order 1999; and
 - (b) the relevant person held immediately before 19th February 2008.
- (3) The record to which paragraph (2)(b) refers must in any event include sufficient information to enable the reconstruction of individual transactions.
 - (4) The relevant person must keep the records to which paragraphs (2) and (2A) refer in such a manner that those records can be made available on a timely basis to the Commission, police officer or customs officer for the purposes of complying with a requirement under any enactment.
 - (5) Where the relevant person (“first person”) is an introducer or intermediary and has given the assurance that is required under Article 16(4)(b) to another relevant person (“second person”), the first person must make available to the second person, at the second person’s request, a copy of the evidence of identification that the first person is required to keep under this Article, such evidence being the evidence that is referred to in Article 16(4)(b)(iii).

20 Periods for which records must be kept

- (1) Where the records described in Article 19(2)(a) or (2A) relate to a business relationship, a relevant person must keep those records for a period of at least 5 years commencing with the date on which the business relationship ends.
- (2) Where the records described in Article 19(2)(a) or (2A) relate to a one-off transaction, a relevant person must keep those records for a period of at least 5 years commencing with the date on which the one-off transaction is completed.
- (3) A relevant person must keep the records described in Article 19(2)(b) or (2A) in relation to each transaction for a period of 5 years commencing with the date on which all activities taking place within the course of that transaction were completed.
- (4) For the purposes of paragraph (2) a one-off transaction is completed on the date of completion of all activities taking place in that transaction.

- (4A) For the avoidance of doubt, the date described in paragraphs (1), (2) and (3) from which the period referred to in those paragraphs commences may be a date that occurred before 4th February 2008.
- (5) The Commission may notify to the relevant person a period longer than 5 years for the purposes of paragraphs (1), (2) or (3) and such longer period shall apply instead of the 5 years specified in those paragraphs.

PART 5

REPORTING AND DISCLOSURE

21 Reporting procedures and related disclosure requirements

- (1) Reporting procedures maintained by a relevant person are in accordance with this Article if they comply with the following requirements –
 - (a) they must provide for communicating the identity of the reporting officer to persons who must or may wish to make reports to that officer;
 - (b) if any individual is designated under Article 9, they must provide for communicating the identity of that individual to persons who must or may wish to make reports to that individual;
 - (c) they must provide for securing that a report is made to the person who is referred to in paragraph (6)(a), (b) and (c) for the purposes of the provisions mentioned in that paragraph;
 - (d) they must provide that if a report is made to a designated person, it must be considered by that person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering;
 - (e) they must provide that if a report is made to a designated person, the report must (subject to Article 22) be forwarded by the designated person to the reporting officer;
 - (f) they must provide that if a report is made or forwarded to the reporting officer, it must be considered by the reporting officer, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering;
 - (g) they must provide for the reporting officer, and any designated person through whom the report is made, to have access to all other relevant

information that may be of assistance to the reporting officer or that designated person;

- (h) they must provide for securing that the information or other matter contained in a report is disclosed, by the person considering the report under sub-paragraph (d) or (f), to a designated police officer or designated customs officer as soon as is practicable, using the form set out in the Schedule to this Order (“Form”), where the person considering the report knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
- (ha) they must provide for securing that the person who makes a disclosure under sub-paragraph (h) provides the designated police officer or designated customs officer with such additional information relating to that disclosure as that officer may reasonably request and that such information is provided in such form and within such reasonable period as that officer may reasonably request;
- (i)
- (2) If a person considering a report under paragraph (1)(d) or (1)(f) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, the first person must, as soon as is practicable, make a disclosure to a designated police officer or designated customs officer –
 - (a) by using the Form; and
 - (b) in compliance with the requirements indicated on the Form.
- (3) The person making the disclosure under paragraph (2) must ensure that –
 - (a) a completed Form is delivered in the manner indicated on the Form; and
 - (b) any information entered upon or accompanying the Form is legible.
- (4) A person who makes a disclosure under paragraph (2) must provide the designated police officer or designated customs officer with such additional information relating to that disclosure as that officer may reasonably request in such form and within such reasonable period as that officer may require.
- (5) Where the relevant person’s business falls within paragraph 1 or 2 of Part B of Schedule 2 to the Law the requirements described in paragraphs (1)(h), (1)(ha), (2) and (4) need not apply where the information or other matter that would be the subject of disclosure has been received in the course of ascertaining the legal position for the relevant person’s client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution of legal proceedings.
- (6) A designated person or, if there is no such person, the reporting officer, shall be –

- (a) the nominated officer referred to in –
 - (i) Article 40A of the Drug Trafficking Offences Law,
 - (ii) Article 34D of the Law, and
 - (iii) Article 23 of the Terrorism Law;
- (b) the appropriate person referred to in –
 - (i) Articles 37(5) and 38(8) of the Drug Trafficking Offences Law, and
 - (ii) Articles 32(5) and 33(8) of the Law; and
- (c) the person to whom disclosure may be made under any procedure established by an employer as described in Articles 21(4) and 22(6) of the Terrorism Law.

22 Reports that need not be forwarded

- (1) If a designated person, on considering a report under Article 21, concludes that it does not give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering, the designated person need not forward it to the reporting officer.
- (2) If a designated person, on considering a report under Article 21, has concluded that it does give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering, the reporting officer need not consider whether that other person is engaged in money laundering.

22A Disclosure within the relevant person's organization

A relevant person may disclose –

- (a) the information contained in any report for the purpose of any of the provisions mentioned in Article 21(6);
- (b) any additional information required under Article 21(4);
- (c) the information contained in any record kept by the relevant person for the purpose of this Order,

to any person or institution with whom or which the relevant person shares common ownership, management or compliance control where such disclosure is appropriate for the purpose of preventing and detecting money laundering.

23 Duty to report evidence of money laundering

- (1) If the Commission –

- (a) obtains any information; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

the Commission shall disclose that information to a designated police officer or designated customs officer as soon as is reasonably practicable.

- (2) If a person is a secondary recipient of information obtained by the Commission, and forms such an opinion as is described in paragraph (1)(b), the person may disclose the information to a designated police officer or designated customs officer.

- (3) If any person specified in paragraph (4) –

- (a) obtains any information while acting in the course of any investigation, or discharging any functions, to which the person's authorization or appointment relates; and
- (b) is of the opinion that the information indicates that any other person has or may have been engaged in money laundering,

the first person shall as soon as is reasonably practicable disclose that information to the persons specified in paragraph (5).

- (4) The persons to whom this paragraph refers are –

- (a) a person authorized by the Commission under Article 26 of the Banking Business (Jersey) Law 1991 to require a person to provide information or produce documents;
- (b) a person appointed by the Commission under Article 28 of the Banking Business (Jersey) Law 1991 to investigate and report to the Commission on a person or business;
- (c) a person authorized by the Commission under Article 9 of the Collective Investment Funds (Jersey) Law 1988 to require a person to furnish information or produce books or papers;
- (d) an inspector appointed by the Commission under Article 22 of the Collective Investment Funds (Jersey) Law 1988;
- (e)
- (f) an inspector appointed by the Minister for Economic Development or the Commission under Article 128 of the Companies (Jersey) Law 1991 to investigate and report on the affairs of a company;
- (g) a person authorized by the Court under Article 208 of the Companies (Jersey) Law 1991 to inspect records of or under the control of a company;

- (h) a person authorized by the Commission under Article 10 of the Insurance Business (Jersey) Law 1996 to require a person to produce information or documents;
 - (i) a person appointed by the Court under Article 11 of the Insurance Business (Jersey) Law 1996 to investigate and report to the Commission on a person or business;
 - (j) an inspector appointed by the Minister for Economic Development or the Commission under Article 31M of the Limited Liability Partnerships (Jersey) Law 1997 (as that Law applies to insolvent limited liability partnerships by virtue of Regulation 1 of the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998);
 - (k) a person providing a report under Article 8(5) of the Financial Services (Jersey) Law 1998;
 - (l) a person authorized by the Commission under Article 32 of the Financial Services (Jersey) Law 1998 to require a person to provide information or documents or to answer questions;
 - (m) a person appointed by the Commission under Article 33 of the Financial Services (Jersey) Law 1998 to investigate and report under that Article to the Commission; and
 - (n) an agent appointed by the Commission under Article 10(1) of the Financial Services Commission (Jersey) Law 1998.
- (5) The persons to whom this paragraph refers are –
- (a) a designated police officer or designated customs officer; and
 - (b) the Commission.
- (5A) If a designated supervisory body (other than the Commission) –
- (a) obtains any information; and
 - (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,
- that body shall disclose that information to a designated police officer or designated customs officer as soon as is reasonably practicable
- (5B) If a person is a secondary recipient of information obtained by a designated supervisory body (other than the Commission) and forms such an opinion as is described in paragraph (5A)(b), the person may disclose the information to a designated police officer or designated customs officer.
- (5C) If any person referred to in paragraph (5D) –

- (a) obtains any information while acting in the course of any investigation, or discharging functions, to which the person's authorization or appointment relates; and
- (b) is of the opinion that the information indicates that any other person has or may have been engaged in money laundering,

the first person shall as soon as reasonably practicable disclose that information to the persons and bodies referred to in paragraph (5E).

(5D) The persons to whom this paragraph refers are –

- (a) a person authorized by a suitable supervisory body under Article 30 of the Proceeds of Crime (Supervisory Bodies) Law to require a person to provide information or documents or to answer questions; and
- (b) a person appointed by a suitable supervisory body under Article 31 of that Law to investigate and report under that Article to that body.

(5E) The persons and bodies to whom this paragraph refers are –

- (a) the suitable supervisory body referred to in paragraph (5D); and
- (b) a designated police officer or designated customs officer.

(5F) In this Article “suitable supervisory body” has the same meaning as in the Proceeds of Crime (Supervisory Bodies) Law.

(6) Disclosure under this Article shall be made in writing.

PART 5A

OTHER MEASURES

23A Shell banks

- (1) A relevant person to whom paragraph (3) applies must not enter into or continue a banking relationship with a shell bank.
- (2) A relevant person to whom paragraph (3) applies must take appropriate measures to ensure that he or she does not enter into, or continue, a banking relationship with a bank that is known to permit its accounts to be used by a shell bank.
- (3) This paragraph applies to a relevant person who carries on a deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991 except the doing of anything by or on behalf of –
 - (a) the States;
 - (b) the central bank of a member State of the European Community; or
 - (c) the National Savings Bank of the United Kingdom.

- (4) For the purposes of paragraphs (1) and (2) –
 - (a) “bank” means a person or body carrying on a deposit-taking business within the meaning of the Banking Business (Jersey) Law 1991 whether or not that business is carried on from within Jersey; and
 - (b) “shell bank” means a bank incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is not subject to supervision by the Commission or by an overseas regulatory authority by reason of that bank’s connection with any other institution or person.
- (5) For the purposes of paragraph (4)(b), “connection” has the same meaning as in Article 3A of the Income Tax (Jersey) Law 1961.

23B Anonymous accounts

A relevant person must not, in relation to any of that person’s customers, set up an anonymous account or an account in a name which it knows, or has reasonable cause to suspect, to be fictitious.

23C Directions where the Financial Action Task Force applies counter- measures

- (1) The Minister may, after consultation with the Commission and any relevant supervisory body, direct any relevant person –
 - (a) not to enter into a business relationship;
 - (b) not to carry out a one-off transaction;
 - (c) not to proceed any further with a business relationship or one-off transaction;
 - (d) to impose any prohibition, restriction or limitation relating to a business relationship or one-off transaction;
 - (e) to apply enhanced customer due diligence measures to any business relationship or one-off transaction,

with any person who is situated or incorporated in a country or territory to which the international body known as the Financial Action Task Force on Money Laundering has decided to apply counter-measures.
- (2) In paragraph (1), “relevant supervisory body” means the supervisory body exercising supervisory functions in relation to that relevant person under the Proceeds of Crime (Supervisory Bodies) Law.

PART 6

MISCELLANEOUS AND CLOSING

24 Citation and commencement

This Order may be cited as the Money Laundering (Jersey) Order 2008.

24A Application to certain businesses

This Order shall not apply before 1st May 2008 to a relevant person whose business falls within paragraph 1 or paragraph 2(1)(b) of Part B of Schedule 2 to the Law.

SCHEDULE

(Article 21)



1



SUSPICIOUS ACTIVITY REPORT

"Use this form if you are reporting a suspicion or knowledge of money laundering or the financing of activities related to terrorism, in line with obligations under the Proceeds of Crime (Jersey) Law 1999 (as amended), the Money Laundering (Jersey) Order 2008 (as amended), the Drug Trafficking Offences (Jersey) Law 1988 (as amended), or the Terrorism (Jersey) Law 2002 (as amended)"

PLEASE REFER TO THE JFCU GUIDE WHEN COMPLETING THIS FORM

Date of Report: _____ JFCU Reference number: - _____ / _____

From: - Disclosing Institution

Name of institution: _____

Address: _____

Sort code: _____

Contact name: _____

Direct Telephone No: _____ Fax: _____

Email: _____ Your reference number: _____

Subject(s) of report

Surname: _____

Maiden or Previous name: _____

Forenames: _____

Mr / Mrs / Ms / Miss (Please circle) Other _____

Alias: _____

Date of Birth: _____ Place of Birth: _____

Gender: male / female (please circle)

Nationality: _____

Occupation: _____

Politically Exposed Person (PEP) : yes / no (please circle)

Building Name / Number _____

Address street 1: _____

Address street 2: _____

Parish/locale: _____

Town / City: _____

County / Country: _____

Postcode: _____

Address Type (specify) _____

Completed forms should be forwarded to the Joint Financial Crimes Unit, PO Box 789, Rouge Bouillon,
St. Helier, Jersey. JE4 8ZD
Tel: (01534) 612250 / Fax: (01534) 870537



2



Contact Details: (Home) _____ (Work) _____
 (Mobile) _____ (Fax) _____
 (Website) _____ (Email) _____
 Identification details: (including Country & number)
 (Passport) _____ Copy attached: yes / no (please circle)
 (Driving Licence) _____ Copy Attached: yes / no (please circle)
 (I.D Card) _____ Copy Attached: yes / no (please circle)
 (Other) _____ Copy Attached: yes / no (please circle)

Company(ies) of report

Company name: _____
 Building Name / Number _____
 Address street 1: _____
 Address street 2: _____
 Parish / locale: _____
 Town / City: _____
 County / Country: _____
 Postcode: _____
 Country & date registered: _____ Registration number (if known): _____
 Address Type (specify) _____
 Telephone No: (Business) _____ (Fax) _____
 (Website) _____ (Email) _____
 Beneficial owner(s): _____

Subject or Company account details

Sort Code / Account number: _____
 Date opened: _____
 Assets held / Balance of Accounts: _____

Completed forms should be forwarded to the Joint Financial Crimes Unit, PO Box 789, Rouge Bouillon,
 St. Helier, Jersey. JE4 8ZD
 Tel: (01534) 612250 / Fax: (01534) 870537



REASONS FOR DISCLOSURE STATISTICAL INFORMATION

(Please tick the most appropriate)

Nature of Institution	✓	Disclosure Type	✓
Accountants		Proceeds of Crime	
Bank		Drug Trafficking	
Bureaux De Changes		Terrorism	
Company Service Provider			
Company Service Provider Trust Company		Grounds For Disclosure?	
Financial Advisors		Account Activity Not in Keeping with KYC	
Fund Managers		Cash Transactions - Inward	
Government Agency		Cash Transactions - Outward	
Insurance Companies		Court Order	
Investment		Due Diligence	
Legal		Due Diligence- Adverse	
Local Regulator		Due diligence- Failure to provide	
Non-FSB-Estate/Travel Agents, Jeweler etc		Due diligence-Inadequate	
Other (specify)		Evidence of Forged Documentation	
Other – Private individual		Fraud / False Accounting	
Other FIU		Group Information	
Other Regular		High Risk Jurisdictions	
Stockbrokers		Highly Transactional	
Tax Consultant		Internet Research	
		Investigation of Fraud Orders	
Criminality Suspected		Layering	
Corruption		Liaison Notice	
Drugs		Media / Publicity	
Fiscal / Revenue		Other (specify)	
Fraud		Other Defence (specify)	
GST Fraud		Police / Customs Enquiry	
Insider Dealing		Production Order	
Other (specify)		Purchase and Surrender of Insurance Policy	
Regulatory Matters		Repeat Disclosures	
Revenue Fraud		Tax	
Tax fraud		3 rd Party Information	
Terrorism		Transaction support - inadequate	
Unknown / undetermined		Transaction support – not provided	
		Transitory Accounts – Immediate Layering	
What currency was involved?		Unusual Forex Transactions	
GBP		EU Sanction identified	
USD		UN Sanction identified	
EURO			
OTHER (specify)			

Completed forms should be forwarded to the Joint Financial Crimes Unit, PO Box 789, Rouge Bouillon,
St. Helier, Jersey, JE4 8ZD
Tel: (01534) 612250 / Fax: (01534) 870537



Please describe any activity that prompted the report, giving reason for your suspicion and any steps that have already been taken. Please include source of wealth, source of funds and activity over the last 4 quarters – debit and credit turnover.
(Please add continuation sheets as necessary)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Other associated persons or companies, full details (please add sheet if necessary):-

Details of introducer/intermediary: _____

Completed forms should be forwarded to the Joint Financial Crimes Unit, PO Box 789, Rouge Bouillon,
St.Helier, Jersey. JE4 8ZD
Tel: (01534) 612250 / Fax: (01534) 870537