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# Crown Dependency of Jersey

Progress report and written analysis by  
the Secretariat of Core Recommendations<sup>1</sup>

12 December 2013

<sup>1</sup> First 3<sup>rd</sup> Round Written Progress Report Submitted to MONEYVAL

The Crown Dependency of Jersey is evaluated by MONEYVAL pursuant to Resolution CM/Res(2012)6 of the Committee of Ministers of 10 October 2012. This progress report was adopted at MONEYVAL's 43<sup>rd</sup> Plenary meeting (Strasbourg, 9-13 December 2013). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref. MONEYVAL(2013)35) at <http://www.coe.int/moneyval>

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## Table of Contents

<b>1. Written analysis of progress made in respect of the FATF Core Recommendations</b>	<b>4</b>
1.1. Introduction .....	4
1.2. Detailed review of measures taken by Jersey in relation to the Core Recommendations.....	5
1.3. Main conclusions.....	14
<b>2. Information submitted by Jersey for the 1st progress report .....</b>	<b>15</b>
2.1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field.....	15
2.2. Core recommendations .....	26
2.3. Other Recommendations.....	41
2.4. Specific Questions.....	47
2.5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC).....	58
2.6. Statistics.....	70
<b>3. Appendices.....</b>	<b>79</b>
3.1. Appendix I - Recommended Action Plan to Improve the AML/CFT System .....	79
3.2. Appendix II – Relevant EU texts.....	84
3.3. Appendix III - Table of referenced Legislation .....	87

**This is the first 3<sup>rd</sup> Round written progress report submitted to MONEYVAL by the United Kingdom Crown Dependency of Jersey. This document includes a written analysis by the MONEYVAL Secretariat of the information provided by Jersey on the Core Recommendations (1,5, 10, 13, SR.II and SR.IV), in accordance with the decision taken at MONEYVAL’s 32<sup>nd</sup> plenary in respect of progress reports.**

# United Kingdom Crown Dependency of Jersey

## First 3<sup>rd</sup> Round Written Progress Report Submitted to MONEYVAL

### *1. Written analysis of progress made in respect of the FATF Core Recommendations*

#### **1.1. Introduction**

1. The purpose of this paper is to introduce the United Kingdom Crown Dependency of Jersey's first report back to the Plenary concerning the progress that it has made to remedy the deficiencies identified in its last assessment on the FATF Core Recommendations.
2. The on-site visit to Jersey was conducted by the International Monetary Fund (IMF) and took place from 29 October -13 November 2008. The IMF published the assessment report of Jersey in September 2009<sup>1</sup>. As a result of the assessment, Jersey was rated by the IMF as being Compliant (C) on 16 recommendations, Largely Compliant (LC) on 28 recommendations and Partially Compliant (PC) on 5 recommendations.
3. On 10 October 2012, the Committee of Ministers of the Council of Europe, following a request by the United Kingdom, being responsible for the international relations of the Crown Dependencies of Guernsey, Jersey and the Isle of Man, adopted a resolution which allows them to participate fully in the evaluation processes of MONEYVAL and to become subject to its procedures. In application of MONEYVAL's rules, and as confirmed by MONEYVAL's plenary decision in April 2013 in respect of third round progress reports, Jersey was required to submit a progress report under the third round procedures. Jersey's evaluation under the 4<sup>th</sup> round follow-up evaluation is scheduled to take place in the second half of 2014.
4. This paper is based on the MONEYVAL Rules of Procedure (as revised in March 2010), which require a Secretariat written analysis of progress against the Core FATF Recommendations<sup>2</sup>. The full progress report is subject to peer review by the Plenary, assisted by the Rapporteur Country and the Secretariat (Rules 38-40). The procedure requires the Plenary to be satisfied with the information provided and the progress undertaken in order to proceed with the adoption of the progress report, as submitted by the country, and the Secretariat written analysis, with both documents being subject to subsequent publication.
5. Jersey has provided the Secretariat and Plenary with a full report on its progress, including supporting material, according to the established progress report template. The Secretariat has drafted the present report to describe and analyse the progress made for each of the Core Recommendations.

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<sup>1</sup> The IMF report (dated 21 August 2009) is available for consultation on the IMF website at the following address: <http://www.imf.org/external/pubs/ft/scr/2009/cr09280.pdf>

<sup>2</sup> It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012. The Core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SR.II and SR.IV.

6. Jersey received the following ratings on the Core Recommendations:

R.1 – Money laundering offence (LC)
SR.II – Criminalisation of terrorist financing (LC)
R.5 – Customer due diligence (PC)
R.10 – Record Keeping (C)
R.13 – Suspicious transaction reporting (LC)
SR.IV – Suspicious transaction reporting related to terrorism (LC)

7. This paper provides a review and analysis of the measures taken by Jersey to address the deficiencies in relation to the Core Recommendations (Section 1.2) together with a summary of the main conclusions of this review (Section 1.3). This paper should be read in conjunction with the progress report submitted by Jersey.

8. It is important to note that the present analysis focuses only on the Core Recommendations and thus only a part of the anti-money laundering/combating the financing of terrorism (AML/CFT) system is assessed. Furthermore, when assessing progress made, effectiveness was taken into account, to the extent possible in a paper based desk review, on the basis of the information and statistics provided by Jersey, and, as such, the assessment made does not confirm full implementation or effectiveness.

## ***1.2. Detailed review of measures taken by Jersey in relation to the Core Recommendations***

### **A. Main changes since the IMF assessment**

9. Since the IMF evaluation, Jersey has taken the following measures with a view to addressing the deficiencies identified in respect of the Core Recommendations:

- Following the IMF evaluation, the authorities have developed in 2009 a detailed action plan<sup>3</sup> to address the recommendations made by the IMF in the evaluation report, which is being updated on a regular basis.
- The Island's Strategy to counter money laundering and the financing of terrorism<sup>4</sup>, adopted in October 2008, was reviewed and modified in May 2011. This document outlines the key money laundering and terrorist financing vulnerabilities that the Strategy Group considered were faced by the Island.
- The Terrorist Asset-Freezing (Jersey) Law 2011 was adopted and came into force on 1 April 2011, replacing the Terrorism (United Nations Measures) (Channel Islands) Order 2001. It has amended the definition of the terrorism under the Terrorism (Jersey) Law 2002 and includes, inter alia, provisions on reporting obligations of persons carrying out financial service business in or from within Jersey as well as persons incorporated or constituted under the Law of Jersey carrying out financial service business in any part of the world. Additionally, guidance was issued in 2011 by the Jersey Financial Services Commission (JFSC) to assist and raise awareness among regulated and supervised entities on international sanctions.
- As a result of consultations made by the JFSC, amendments were adopted to the Money Laundering Order (Jersey) Order 2008 (MLO)/ (Amendment no.4 of 11 January 2010,

<sup>3</sup> [http://www.jerseyfsc.org/pdf/Action\\_Plan\\_FATF\\_40+9\\_Recommendations\\_2013.09.17.pdf](http://www.jerseyfsc.org/pdf/Action_Plan_FATF_40+9_Recommendations_2013.09.17.pdf)

<sup>4</sup> [http://www.jerseyfsc.org/anti-money\\_laundering/information\\_and\\_publications/island\\_strategy.asp](http://www.jerseyfsc.org/anti-money_laundering/information_and_publications/island_strategy.asp)

Amendment no. 5 of 2 August 2013), which include inter alia clarifications on the application of the provisions dealing with enhanced and simplified customer due diligence. Additional amendments are expected to be adopted in December 2013<sup>5</sup>.

- Changes and updates were also introduced to the 2008 Handbook for the Prevention and Detection of Money Laundering and Terrorist Financing<sup>6</sup> (hereinafter referred to as the AML/CFT Handbook) (last updated 27 November 2013).
10. In addition, Jersey has initiated work on the consolidation of the Proceeds of Crime (Jersey) Law 1999 (POCL), Drug Trafficking Offences (Jersey) Law 1988 (DTOL) and money laundering provisions in the Terrorism (Jersey) Law 2002 (TL). It was reported that the draft Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey Law 201- (hereinafter the draft Proceeds of Crime and Terrorism Law) would be lodged for debate with the States Assembly (the Island's legislative assembly) before the end of 2013<sup>7</sup>.
  11. Jersey has also taken additional measures to address deficiencies identified in respect of the key and other Recommendations, as indicated in the progress report. However these fall outside of the scope of the present report and thus are not reflected in the text of the analysis beneath.

## **B. Review of measures taken in relation to the Core Recommendations**

### **Recommendation 1 - Money laundering offence (rated LC in the IMF report)**

12. Money laundering is criminalised through the POCL, the DTOL, and the TL. Four deficiencies were identified in the IMF report, as regards the scope of the offences set out in the POCL and DTOL, namely that:
  - Deficiency 1: *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;*
  - Deficiency 2: *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/proceed;*
  - Deficiency 3: *Article 18 TL does not cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions.*
  - Deficiency 4: *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.*
13. All these deficiencies need to be addressed through legislative changes. The authorities have decided to consolidate the AML/CFT legislation into one single law. They have reported that the

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<sup>5</sup>Subsequently made on 12 December 2013. See: <http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2013%2FR%26O-163-2013.htm>

<sup>6</sup>[http://www.jerseyfsc.org/anti-money\\_laundering/regulated\\_financial\\_services\\_businesses/aml\\_cft\\_handbook.asp](http://www.jerseyfsc.org/anti-money_laundering/regulated_financial_services_businesses/aml_cft_handbook.asp)

<sup>7</sup>Subsequently lodged on 13 December 2013. See: <http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.163-2013.pdf>.

draft Proceeds of Crime and Terrorism Law, which is meant to integrate the relevant requirements set out currently in the three laws mentioned above, is at an advanced stage and that the draft text would be lodged by the Chief Minister before the States Assembly by the end of 2013. Relevant changes, as recommended in the report, would also be introduced in order to cover the identified gaps. Consequently, work appears to be in progress though the deficiencies identified cannot be considered as having been addressed pending the enactment of legislation.

14. In addition to the above-mentioned deficiencies, the IMF report also recommended that the authorities 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. The authorities reported back that the level of proof required is always beyond reasonable doubt and that in the current practice, proving that property stemmed from the commission of a predicate offence has not posed such a barrier.
15. At the time of the IMF assessment, Jersey had conducted 17 investigations for money laundering, of which 12 led to prosecutions (out of which one was terminated during prosecution, one case was pending and 10 cases resulted in a conviction). The IMF report did not formulate a final opinion on the effective application of Jersey's money laundering provision; however the IMF evaluation team indicated that the criminal provisions seem to be implemented effectively. This was primarily based on the fact that Jersey, unlike other jurisdictions facing similar challenges, had by then developed its own jurisprudence on money laundering, including autonomous money laundering and 58% of the investigations for money laundering resulted in a conviction.
16. The following chart summarises the updated data provided by Jersey on investigations, prosecutions and final convictions for ML offences for the period 2009 to 2013:

	Investigations		Prosecutions		Final Convictions	
	Cases	Persons	Cases	Persons	Cases	Persons
<b>2009</b>	1	1 <sup>8</sup>	1	1	-	-
<b>2010</b>	1	1 <sup>9</sup>	2	2	2	2 <sup>10</sup>
<b>2011</b>	1	4 <sup>11</sup>	-	-	-	-
<b>2012</b>	1	4 <sup>12</sup>	-	-	-	-
<b>2013*</b>	2 <sup>13</sup>	5	3 <sup>14</sup>	5	3	5

\*As of 1<sup>st</sup> of November 2013

17. Details on the money laundering convictions achieved by Jersey in the period 2009-2013 are further detailed in the progress report. It is to be noted that the 2013 cases (McFeat, Smyth and Howard; Ellis and Figueira) relate all to third party laundering of drug trafficking proceeds locally. The amounts involved may be considered relatively small. The Royal Court has in these cases reaffirmed its stance that it takes a serious view of money laundering. They have stressed that serious punishment should be expected even if offenders did not know the full details of what was involved, where they deal with proceeds having suspicion that they are proceeds of trafficking, given that the part played in laundering these proceeds is a vital part of the overall drug trafficking enterprise.

<sup>8</sup> Bhojwani investigation ongoing from 2001, prosecution proceedings began in 2008.

<sup>9</sup> Bhojwani ongoing

<sup>10</sup> Bhojwani conviction and Michel, P.

<sup>11</sup> Single investigation covering McFeat et al and Ellis.

<sup>12</sup> Ibid

<sup>13</sup> McFeat et al and Ellis, and re-opening of the financial investigation relating to Figueira (started in 2005-2006), following her return to the island and arrest in June 2013.

<sup>14</sup> McFeat et al and Ellis brought as separate prosecutions, and the prosecution of Figueira.

18. Two convictions are particularly to be noted, namely the Peter Michel case (2010) and Bhojwani (2010), which have developed useful case law. Peter Wilson Michel, who was a chartered accountant, offered for many years a money laundering service for overseas tax fraudsters, setting up and administering trusts and companies on behalf of clients, taking in substantial quantities of cash and delivering cash to clients. The case involved a multi-million pound VAT fraud in the UK. He was convicted in 2007 and sentenced to 6 years' imprisonment (concurrent) for 9 counts of money laundering on the basis of the POCL and a confiscation order was made for £9.7 million. A retrial was ordered, during which he pleaded guilty in 2010 to 7 of the 9 counts of assisting another to retain the benefit of criminal conduct contrary to Article 32(1) of the POCL. He was sentenced to 4 years imprisonment in respect of each count, concurrent. A confiscation order was made for £6,528,707. Mr Michel was also disqualified from acting as a company director for 6 years (pursuant to Article 78 of the Companies (Jersey) Law).
19. The Bhojwani case is a case of serious criminality involving money laundering undertaken over a short period in an unplanned reaction to external events, for a substantial sum in order to hide wealth created by the defendant's own criminal conduct. The defendant is an Indian national who made a criminal fortune of almost US\$40 million selling vehicles to the Nigerian Government under two separate contracts in 1996 and 1997 through a Panamanian shelf company. The defendant kept his own proceeds of this crime at Bank of India Jersey from 1997 until 20 October 2000, when the Financial Times ran a major exposé on Nigerian government corruption under President Abacha in which it revealed that the Swiss authorities had launched a money laundering investigation and had identified coded Swiss accounts into which the defendant knew he had paid millions in bribes in 1996. In response to the media news of the money laundering investigations, including in Jersey, the defendant committed the first of three money laundering offences by converting the balances of the bank accounts at Bank of India Jersey into freely negotiable bankers' drafts in a total sum of \$43.9 million. He then committed the second money laundering offence by having the drafts couriered out of Jersey. The drafts remained out of the banking system until 2 November when the defendant committed the third money laundering offence by converting the drafts by paying them into the accounts at Bank of India Jersey of three different front companies owned by him. Each conversion and the removal was done with the purpose of avoiding a Jersey prosecution and/or a Jersey confiscation order. Bhojwani was sentenced to 6 years imprisonment on each count concurrent. £22,559,560.33 was returned by Jersey to the Nigerian authorities, with the agreement of the Nigerian government, from the funds confiscated from Mr Bhojwani.
20. From the statistics received, it would seem that since the last evaluation, at least one investigation and conviction have resulted from a suspicious activity report (SAR). However, when considering the average number of SARs received (over 1700 per year) and disseminated to law enforcement for investigation, the discrepancy with the results achieved raises questions and concerns. This review has considered the scale of Jersey's financial activities, the risks and typologies identified by the authorities, and the number of ML investigations, prosecutions and types of cases where convictions have been achieved in the reference period. While the Bhojwani case is undoubtedly a significant success, on the basis of the prosecution figures, overall, the reviewers have some reservation about the overall effectiveness of the implementation of the ML provisions.
21. To conclude, the Jersey authorities are in the process of finalising new legislation aimed at addressing the identified deficiencies and there have been a few significant cases where final convictions have been achieved for ML and have consolidated previous case law. However, as stated above, from a desk based review, there remain some reservations on the effectiveness of ML investigations and prosecutions and this issue will need to be considered in more detail in the 2014 MONEYVAL on-site assessment and subsequent evaluation report.



## **Special Recommendation II - Criminalisation of terrorist financing (rated LC in the IMF report)**

22. The financing of terrorism was criminalised by Jersey in 2002. Two deficiencies were identified in the IMF report.
23. Deficiency 1: *Article 2 of the TL does not contain a reference to international organisations.* This deficiency has been addressed. The TL (Article 2(1)(b)) was amended by the Terrorist Asset-Freezing (Jersey) Law 2011. The definition of terrorism now explicitly includes a reference to the use or threat of action where it is designed to influence an international organization.  
Deficiency 2: *The definition of “terrorism” in Article 2 of the TL does not extend to all terrorism offences as defined in the nine conventions and protocols listed in the annex to the FT Convention.* This deficiency has not yet been addressed. The authorities have indicated that this aspect is intended to be covered in the draft Proceeds of Crime and Terrorism Law, which is yet to be submitted to the States Assembly, as noted under R.1. Consequently, work appears to be in progress though the deficiencies identified cannot be considered as having been addressed pending the enactment of legislation.
24. The IMF report also recommended that the authorities consider the impact of including in the FT offence the “*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. The authorities indicated that a reference to the political, religious or ideological cause is included in the draft Proceeds of Crime and Terrorism Law.

### ***Effectiveness***

25. The FT offence has never been tested before the courts in Jersey. Several SARs relating to terrorist financing suspicions have been disseminated for further investigation though these do not appear to have led to investigations, prosecutions or convictions.

## **Recommendation 5 - Customer due diligence (rated PC in the MER)**

26. The IMF report has identified 5 deficiencies as regards Jersey’s compliance with R.5, detailed hereafter, which need to be addressed through amendments to the legislation or guidance.
27. Deficiency 1 *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.* In the 2009 report, the assessors noted that Article 17 of the MLO permitted a relevant person to establish an account in the name of a certain types of intermediary<sup>15</sup> without identifying (or verifying the identity of) the underlying customer for whom the intermediary was acting (or any beneficial owners or controllers), subject to a number of conditions (such as for instance, being satisfied with the risk presented by applying simplified measures). The assessors were of the view that while this concession was pragmatic (especially in cases where pooled accounts were involved), it placed significant reputational reliance on the quality of the AML/CFT processes of the intermediary and could place the relevant person in a difficult position should weaknesses subsequently emerge regarding the quality of the CDD of the intermediary. Additionally, it was concluded that this concession was not in line with Recommendation 5, since it provided a complete

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<sup>15</sup> This covers a financial institution that is subject to the Core Principles and carrying on deposit-taking business, insurance business, investment business, or fund services business; or a permit holder or certificate holder of a collective investment scheme; and subject to prudential, conduct of business and AML/CFT supervision by the Commission or equivalent overseas supervisors.

exemption from the requirement to determine whether the customer is acting on behalf of another person and then taking reasonable measures to obtain sufficient identification data to verify the identity of that other person. Hence, the authorities were urged to conduct a risk-based review of the scope of the concessions allowing reliance on third parties to conduct CDD and limit their availability to be strictly consistent with the FATF Recommendations.

28. The authorities indicated that a review was conducted to determine whether the continued application of Article 17 presented an unacceptable ML/FT risk in Jersey. Ahead of a full national risk assessment (in 2014) it was concluded that the simplified identification measures under Article 17 should be retained subject to additional requirements. These include: (1) the requirement to record the assessment of the risk of relying on an intermediary and the reasons on the basis of which the relevant person considers it fit to apply simplified identification measures and (2) the prohibition of applying simplified identification measures where the intermediary is considered to present a higher ML/FT risk or has a relevant connection with a country subject to a FATF call to apply countermeasures. These additional measures were included in an order amending the MLO, which is expected to enter into force in December 2013.
29. While it is noted positively that the Jersey authorities have taken steps to strengthen the requirements for the application of simplified identification measures in relation to those categories of intermediaries that may be subject to simplified measures, it appears that no measures have been taken to introduce the requirement in Article 17 to routinely identify any of the intermediary's underlying customer(s) (or beneficial owners or controllers) before entering into a relationship with the intermediary. In this respect, it is to be noted that criterion 5.9 permits the application of simplified or reduced CDD measures when identifying and verifying the identity of the customer and the beneficial owner. However the general rule remains that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner. The authorities are therefore recommended to ensure that the concessions available comply with this requirement.
30. Deficiency 2 : *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.* At the time of the assessment in 2009, the assessors noted that, pursuant to Article 18 of the MLO, relevant persons were permitted to apply simplified identification measures in relation to certain products or services without having to determine that the customer resides in a country that is compliant with and has effectively implemented the FATF Recommendations. A recommendation was made to address this deficiency.
31. This review notes that, in the intervening period, the requirement to determine that the customer resides in a country that is compliant with and has effectively implemented the FATF Recommendations has not been extended to customers who acquire those low-risk products which are subject to simplified identification measures (under Article 18(3) to (6)). The position of the authorities, as expressed in the progress report, is that the nature of the product or service offered that makes the relationship lower risk, rather than the residence of the customer. While the considered conclusion of the authorities is appreciated, it is to be noted that Criterion 5.10 simply states that the application of simplified CDD measures to customer resident in another country should be limited to countries compliant with FATF Recommendations, irrespective of whether the product or service itself is low risk. It is therefore recommended that the authorities re-consider their position.
32. Deficiency 3: *Some exceptions from conducting full CDD are not conditioned on the absence of specific higher risk scenarios.* In the 2009 report it is noted that the simplified identification elements under Articles 16 and 17 (introducers and intermediaries) do not prohibit the application of simplified CDD measures in specific higher risk scenarios (as required by criterion 5.10). This deficiency has not been addressed yet. However, the authorities indicated that provisions to this

effect have been included in an order amending the MLO, which is expected to enter into force in December 2013.

33. Deficiency 4: *Current list of high-risk customers in the MLO omits some significant high-risk business categories of relevance in Jersey.* During the 2009 assessment, Jersey law was found not to require enhanced CDD measures for all examples of higher-risk business set out in the FATF Recommendations. The authorities were therefore advised to remedy this shortcoming by expanding the list of categories of higher-risk customers in the MLO (in particular to include private banking and non-resident customers) to which enhanced CDD must be applied.
34. It appears that no changes have been implemented to address this matter in the period since the assessment. In the progress report the authorities referred to Article 15(1) in the MLO (which requires the application of enhanced CDD in any situation which can present a higher risk of ML/FT) in combination with Sections 3.3.1 and 3.3.4 of the AML/CFT Handbook (which elaborate on the manner in which higher risk scenarios are to be determined) as the basis on which the examples of higher-risk categories provided under criterion 5.8 (including private banking and non-resident customers) are covered in Jersey law. The authorities also indicated that additional guidance on the types of country that may present a higher risk was published in February 2013. While acknowledging the views of the authorities, it should be noted that the provisions in the MLO and the AML/CFT Handbook referred to by the authorities had already been in place at the time of the assessment. Nevertheless, the assessors still questioned the appropriateness of the approach adopted in Jersey. The authorities are therefore recommended to seriously re-consider implementing the recommendation made by the assessment team in 2009 regarding this matter.
35. Deficiency 5: *Tighter implementation needed regarding timing of completion of CDD measures for existing customers.* In the 2009 assessment, it was noted that some of the financial institutions interviewed, which had availed themselves of the possibility to verify the identity of the customers after the establishment of a business relationship, had not been completing the verification process as soon as reasonably practicable (as required under criterion 5.14(a)). Additionally, the condition under Article 13(4) (which refers to the possibility of verifying the identity of the customer only if it is necessary not to interrupt the normal conduct of business) was being interpreted liberally. A recommendation was therefore made to the authorities to conduct a risk-based review of the use by relevant persons of the scope to defer verification requirements and issue further guidance as needed to limit the practice.
36. As a result of this recommendation a proposal was put forward by the authorities to make separate provision for, and regulate, cases when verification of identity is most likely to be delayed. Separate provisions will be inserted in the law to provide for the delay in the verification of identity of a beneficiary under a life assurance policy and a person who is considered to have a beneficial interest in an arrangement such as a trust. In relation to all other cases where identification is delayed, relevant persons will also be required to report periodically to senior management to ensure that appropriate policies and procedures are in place to address the risk that is involved in delaying the verification measures and to identify cases where verification has still to be verified after a certain period of time. In all other cases the existing provisions will continue to apply. The new provisions were included in an order amending the MLO, which is expected to enter into force in December 2013.
37. In conclusion, overall, the proposed changes, when they will be effective, will have addressed the concerns expressed in the 2009 assessment. At the same time, additional changes are required, as recommended above. The effectiveness of the implementation of these new measures will be assessed during the MONEYVAL 4<sup>th</sup> round evaluation of Jersey, which is scheduled to take place in the second half of 2014.

## *Effectiveness*

38. The authorities provided information on AML/CFT violations and sanctions imposed by the JFSC in respect of financial institutions and also Trust Company Business (page 70 of the progress report). While noting positively that a number of AML/CFT violations were identified by the JFSC, it appears that pecuniary sanctions have not yet been introduced within the range of sanctions available to the relevant authority. In the absence of such a power, the measure most commonly applied by the JFSC is the power of direction, which requires a person to take or refrain from taking certain action (including closing a business) or prevents a person working in the regulated financial sector (which will be accompanied by a public statement). Although no information was available on the breaches identified, from sources referred to by this review<sup>16</sup>, examples of type of CDD deficiencies commonly identified relate to inadequate risk assessments, undue reliance on intermediaries for AML/CFT purposes and insufficiently detailed or infrequent ongoing monitoring. As mentioned above, the effectiveness of the implementation of CDD requirements in Jersey will be assessed in more detail in the on-site evaluation in 2014.

### **Recommendation 10 – Record keeping**

39. There were no recommended action points in the IMF report in respect of R.10, which was rated Compliant. The compliance with R.10 and effectiveness of implementation will be assessed in the 4<sup>th</sup> round follow-up evaluation.

### **Recommendation 13 – Suspicious transaction reporting & Special Recommendation IV– Suspicious transaction reporting related to terrorism (both rated LC in the MER)**

40. The IMF report was satisfied that the suspicious transaction reporting regime, set out in the three laws (POCL, the DTOL, and the TL) largely complied with the requirements of R.13 and SR.IV. One factor underlined the LC rating for both recommendations, namely that there appeared to be scope to improve the timeliness of the SAR reporting in order to enhance effectiveness.
41. *Deficiency: To enhance effectiveness, there appears to be scope to improve the timeliness of SAR reporting.* In order to address this finding, the authorities have indicated in their action plan that additional data would be collected to determine the timeliness of the SAR reporting through on-site and off-site supervision to ascertain which steps may be needed to enhance reporting and that such steps may include outreach to the relevant sectors. It was reported that the self-assessment questionnaire used for supervision examinations of persons carrying on investment business and funds services business requests included specific questions aimed at forming the basis of a review of the timeliness of reporting. Additionally, SAR reporting practices were considered in the context of a series of AML thematic examinations of deposit-takers between 2008-2010 and two examples of the JFSC's findings were provided where timeliness issues were raised and remediating action required. Jersey also indicated that the FIU now receives close to 50% of the SAR online, which should increase the speed of response and accuracy of data input. The measures referred to above show that the authorities are indeed following-up on this issue. For the purpose of this review, this deficiency is considered as requiring on-going action. The information provided does not enable a firm conclusion as to whether the approach taken by the authorities covers in a comprehensive manner the issue of timeliness of reporting by all types of financial institutions. This aspect will be verified during the 4<sup>th</sup> round on-site visit.
42. Lastly, the Secretariat noted that the IMF assessors did consider whether the relevant provisions of the POCL, DTOL and TL, which created an offence for failing to report when the required conditions are met rather than overtly requiring reporting of suspicions, are fully in line with R. 13

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<sup>16</sup> JFSC 2012 Annual Report.

and SR.IV, for compliance with which only a direct reporting requirement is acceptable. The assessors had concluded that in practice, the inverted nature of the reporting requirement did not appear to impact negatively on the decisions of relevant persons to report and thus, they considered that those could be equivalent to a direct reporting requirement. This issue would need to be reconsidered in the context of the 4<sup>th</sup> round follow-up visit. Meanwhile, given that the authorities are now consolidating into one law the AML requirements, and that this legislation is yet to be adopted, it is strongly advised to reconsider in this process the approach previously taken and use this opportunity to include a direct reporting obligation, which would fully meet the R.13 and SR.IV's requirements, and to set out clearly the recipient of such reports.

### **Effectiveness**

43. The following chart sets out the number of SARs received from reporting entities, of cases opened by the FIU and disseminations for investigation by the law enforcement, as well as resulting indictments and convictions. The authorities have also provided statistics on reporting levels with breakdowns per type of reporting institutions (see statistics in the progress report).

Year	Suspicious activity reports		Cases opened by the FIU		Notifications to Law Enforcement/ Prosecutions		Indictments				Convictions			
	ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
							Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
2009	1841	12	100%		Data not available		0	0	0	0	0	0	0	0
2010	1739	7					1 <sup>17</sup>	1	0	0	2 <sup>18</sup>	2	0	0
2011	1834	13			2,028	0	0	0	0	0	0	0	0	
2012	1735	14			1,821	0	0	0	0	0	0	0	0	
2013*	1438	10			1,180	0	0	0	0	0	0	0	0	

\* January to September 2013

44. The vast majority of SARs relate to subjects, entities and activity overseas. The reporting levels appear to indicate that the overall level of reporting has increased in 2009 (1853 SARs), compared with the situation at the time of the IMF assessment in 2008 (1404 SARs) and has remained relatively constant over the last several years. Reports filed by banks continue to represent about 65-70% of all SARs received by the FIU. Company Service Providers are the second largest reporting source. Reports have also been received consistently from other reporting entities in the financial sector. Several SARs relating to terrorist financing suspicions have also been received (2009: 12, 2010: 7; 2011: 13; 2012:14; 2013: 10).

45. In the period 2009-2013, 1 indictment and 2 successful ML convictions arose from SARs system, which is encouraging. None of the FT related SAR have led to an investigation. Statistics are not regularly maintained on the number of cases where FIU intelligence resulting from SARs analyses

<sup>17</sup> P. Michel (fresh indictment following order of retrial)

<sup>18</sup> Bhojwani conviction (indictment laid 2008) and P. Michel conviction.

has resulted in an investigation by law enforcement officials. However, the authorities have provided the following data on investigations conducted by the Operational Unit of the JFCU:

<b>Year</b>	<b>Investigations<sup>1</sup> by the Operational Unit of the JFCU</b>	<b>SAR<sup>2</sup></b>
<b>2009</b>	15	152
<b>2010</b>	1	0
<b>2011</b>	9	67
<b>2012</b>	13	72
<b>2013*</b>	5	19
<b>Grand Total</b>	<b>43</b>	<b>310</b>

<sup>1</sup> The table shows investigations by the year the investigation was started, not the year the SAR was received.

<sup>2</sup> Some SARs received between 2009-2013 that are linked to on-going investigations started prior to 2009 are not identified on the above table

46. Further analysis of disclosures made by the reporting entities, will be necessary on the basis of additional information and breakdowns (eg. per disclosures made under each of the three distinct laws, type of business, grounds of suspicions, number of suspicious attempted transactions, etc) before being able to formulate an opinion on the quality and quantity of reports and to assess the effectiveness of implementation of the reporting obligation by reporting entities. Given the limits of the desk-based review, the efficiency and effectiveness of the SAR system remain to be demonstrated in the context of the 4<sup>th</sup> round evaluation.

### **1.3. Main conclusions**

47. Since the IMF evaluation, the Jersey authorities have undertaken a comprehensive review of the recommendations relating to the Core recommendations, with a detailed action plan setting out the necessary actions needed to address the identified deficiencies and regular reviews of progress. Jersey reported specific measures indicating varying levels of progress on all Core recommendations, as outlined in the progress report submitted to the MONEYVAL Plenary. A number of these actions are in process or have already been implemented, as detailed in the desk analysis above. As regard to the aspects raised in respect of Recommendation 1, and to a certain extent of Special Recommendation II, it is noted that the consolidated legislation has yet to be introduced before the States Assembly, though its drafting is at an advanced stage. The jurisprudence in respect of ML cases achieved during the reporting period is undoubtedly welcome progress. The CDD requirements have been revisited through amendments made to the relevant order and guidance. The awaited additional amendments and updated guidance should bring further improvements.

48. It can thus be concluded that there is a clear process in train to implement the recommendations made by the IMF assessment team, and that numerous measures have already been taken in this respect, though there remain some issues to address as set out above. The full range of changes underway or introduced, as well as the effective implementation of the new legislation and of the new preventive measures and actions taken by the Jersey authorities will be assessed by MONEYVAL in its forthcoming evaluation in 2014.

49. As a result of the discussions held in the context of the examination of this first progress report, the Plenary was satisfied with the information provided and the progress being undertaken and thus approved the progress report and the analysis of the progress on the core Recommendations. Pursuant to the Rules of procedure, the progress report should be subject to an update every two years between evaluation visits (i.e. December 2015). However, according to the revised rules of procedure, the third round follow-up process shall end if a fourth round evaluation visit is undertaken by MONEYVAL before an update report is due to be submitted.

## ***2. Information submitted by Jersey for the 1st progress report***

### ***2.1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field***

#### **AML/CFT legislation**

1. As when the Island was last assessed by the International Monetary Fund (the “**IMF**”), the primary legislation criminalising money laundering in Jersey is the Proceeds of Crime (Jersey) Law 1999 (the “**Proceeds of Crime Law**”), the Drug Trafficking Offences (Jersey) Law 1988 (the “**Drug Trafficking Offences Law**”) and the Terrorism (Jersey) Law 2002 (the “**Terrorism Law**”). A link to these laws may be found at **Appendix III item V., G., Y.** respectively.
2. The primary legislation criminalising terrorist financing in Jersey is the Terrorism Law.
3. Measures to be taken by relevant persons including designated non-financial businesses and professions (“**DNFBPs**”) to prevent money laundering and terrorist financing (“**AML/CFT**”) are set out in the Money Laundering (Jersey) Order 2008 (the “**Money Laundering Order**”). A link to the Money Laundering Order may be found at **Appendix III (item Q.)**. Recent amendments to the Money Laundering Order are explained below.
4. Additional AML/CFT regulatory requirements are set through Codes of Practice issued under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “**Supervisory Bodies Law**”). A link to the Supervisory Bodies Law may be found at **Appendix III (item W.)**. These requirements, along with guidance and a summary of the legislative requirements, are published in three handbooks:
  - The Handbook for the Prevention and Detection of Money Laundering and Terrorist Financing for Financial Services Businesses Regulated under the Regulatory Laws<sup>19</sup> (the “**AML/CFT Handbook**”). A link to which may be found at **Appendix III (item 1)**.
  - The Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector (the “**Handbook for the Accountancy Sector**”). A link to which may be found at **Appendix III (item 2)**.
  - The Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector (the “**Handbook for the Legal Sector**”). A link to which may be found at **Appendix III (item 3)**.
5. These handbooks are updated from time to time.
6. The Jersey Financial Services Commission (the “**Commission**”) supervises for compliance with AML/CFT legislative and regulatory requirements under the Supervisory Bodies Law.

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<sup>19</sup> Regulatory laws is a generic term which covers the following individuals laws: Collective Investment Funds (Jersey) Law 1988 (**Appendix III item B.**); Banking Business (Jersey) Law 1991 (**Appendix III item A.**); Insurance Business (Jersey) Law 1996 (**Appendix III item M.**); and Financial Services (Jersey) Law 1998 (**Appendix III item H.**).

7. The Joint Financial Crimes Unit (the “**JFCU**”) is responsible for receiving, analysing, and disseminating suspicious activity reports that are made under the legislation that is referred to above. The JFCU also has responsibility for the compilation of confiscation reports, specifically for drug trafficking offences, that are later presented to the Royal Court.
8. Both the JFCU 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, both agencies work closely together in furtherance of such investigations.
9. The Attorney General is head of the Law Officers’ Department which is responsible for the prosecution of money laundering, terrorist financing, and serious or complex fraud.
10. The term “relevant person” is used throughout this questionnaire and is used to describe a person carrying on a “financial services business” in or from within Jersey, or, if a Jersey incorporated company, carrying on that business in any part of the world.
11. Schedule 2 of the Proceeds of Crime Law specifies what “financial services business” is. The term “financial services business” covers all of the activities carried on by a financial institution or DNFBP (terms as defined by the Financial Action Task Force (the “**FATF**”)).

#### **Updated risk assessment**

12. In October 2008, Jersey’s Anti-Money Laundering and Countering the Financing of Terrorism Strategy Group (the “**Strategy Group**”) published its first Island Strategy to Counter Money Laundering and the Financing of Terrorism. A link to the first Island Strategy to Counter Money Laundering and the Financing of Terrorism may be found in **Appendix III (item 4)**. This formal document outlined the key money laundering and terrorist financing vulnerabilities that the Strategy Group considered were faced in the Island at that time. For each vulnerability that had been identified, there was a “goal” and, for each “goal”, a number of actions to achieve that “goal”.
13. The Strategy Group undertook to carry out regular reviews of the strategy document, including the vulnerabilities and goals identified in it, to ensure that the document remained current and relevant. As a result of such a review, the Strategy was updated in May 2011 to include a new vulnerability. This vulnerability has emerged in the current economic climate and follows on from an increasing tendency of persons carrying on financial services business to seek business in new markets, which often includes jurisdictions that are considered to present higher money laundering and terrorist financing risks. Risks may be higher, for example, where beneficial owners and controllers of customers are connected to higher risk jurisdictions or where a customer conducts activities in such a jurisdiction.
14. In summary the current goals are to:
  - Raise awareness of statutory AML/CFT obligations in those sectors considered to have lower awareness.
  - Raise awareness of money laundering and terrorist financing typologies that are relevant to Jersey.



- Raise awareness of the importance of considering the issues involved in dealing with higher risk jurisdictions.

## **New legislation**

15. The following legislation has been enacted since 2009.

### *Money Laundering (Amendment No. 4) (Jersey) Order 2010*

16. The Money Laundering (Amendment No. 4) (Jersey) Order 2010 was made on 11 January 2010 and came into force on 18 January 2010. In particular:

- Articles 1 and 3 of the Money Laundering Order now make it absolutely clear that - in law - customer due diligence (“**CDD**”) measures are to be applied to legal arrangements (including trusts) as well as legal persons. In particular, Article 3(2)(b) of the Money Laundering Order has been amended to explicitly cover the case where a customer is a trustee of a trust.
- Articles 7(2A)(b), 8(2A)(b), and 9(2)(b) of the Money Laundering Order now provide that the records that a compliance officer and reporting officer (or designated person) must have access to will include the records that must be kept by a relevant person under Article 19 of the Money Laundering Order. This includes records of CDD measures carried out.
- Similarly, Article 21(1)(g) of the Money Laundering Order now provides that the relevant information that a reporting officer or designated person must have access to when considering whether to make a report to the JFCU will include the records that must be kept by a relevant person under Article 19.
- Article 11(3)(b) of the Money Laundering Order now refers to the need for additional measures to prevent the misuse of technological developments in money laundering and terrorist financing.
- Article 11(3)(g) of the Money Laundering Order now provides that particular attention must be paid to implementing policies and procedures that are sufficient to prevent and detect money laundering and terrorist financing in subsidiaries and branches of a relevant person that are situated in countries and territories that do not, or insufficiently apply, the FATF Recommendations.
- Article 16(4)(c) of the Money Laundering Order now clearly states that identification information that had been collected by a person on whom reliance is placed must be obtained by a relevant person before a relationship may be established or one-off transaction carried out.
- Article 18(8) of the Money Laundering Order now limits the scope of simplified identification measures applied to the identification of any person purporting to act on behalf of the customer. The effect of this is that, where an individual is employed by a trust and company services provider and acts on behalf of a company that is a customer of that services provider, a relevant person is now required to verify the authority of the trust company employee to act for the company.

17. A link to this law may be found at **Appendix III (item O.)**.

*Terrorist Asset-Freezing (Jersey) Law 2011*

18. The Terrorist Asset-Freezing (Jersey) Law 2011 (the “**TAF Law**”) came into force on 1 April 2011. A link to the TAF Law may be found at **Appendix III (item Z.)**. It replaces the Terrorism (United Nations Measures) (Channel Islands) Order 2001.

19. Article 2 of the TAF Law defines a designated person as:

- A person which is the subject of a designation under the TAF Law;
- A person who is the subject of a designation, being a designation within the meaning of the Terrorist-Asset Freezing etc. Act 2010 of the United Kingdom (the “**UK**”); or
- A natural or legal person, group or entity included in the list (as in force from time to time) provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain person and entities with a view to combating terrorism (as that Regulation is amended from time to time).

20. The Minister for External Relations has the power to issue interim and final designations under Articles 7 and 8 of the TAF Law respectively. However, given that those designated by the UK and European Union (the “**EU**”) are automatically “designated persons” under Article 2, it is considered unlikely that this power will be extensively used. Presently no designations have been made by the Minister for External Relations.

21. Part 3 of the TAF Law contains a number of prohibitions in relation to designated persons. Those prohibitions are as follows:

- Dealing with funds or economic resources owned, held or controlled by a designated person, knowing or having reasonable cause to suspect such funds or economic resources are being dealt with (Article 13).
- Making funds or financial services available (directly or indirectly) to a designated person, knowing or having reasonable cause to suspect, the funds or financial services are being made so available (Article 14).
- Making funds or financial services available to any person for the benefit of a designated person, knowing or having reasonable cause to suspect the funds or financial services are being made so available (Article 15).
- Making economic resources available (directly or indirectly) to a designated person, knowing or having reasonable cause to suspect that the economic resources are being made so available and that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services (Article 16).

- Making economic resources available to any person for the benefit of a designated person, knowing or having reasonable cause to suspect that the economic resources are being made so available (Article 17).
  - Intentionally participating in activities, knowing that the object or effect of such activities (whether directly or indirectly), is to circumvent or facilitate the contravention of any of the above prohibitions (Article 20).
22. A breach of any of the prohibitions is a criminal offence carrying a penalty of up to 7 years imprisonment and/or a fine. The prohibitions do not apply to anything done under the authority of a licence granted by the Minister for External Relations under Article 19 of the TAF Law.
23. Under Article 21 of the TAF Law a relevant institution must inform the Minister for External Relations of certain information as soon as practicable if:
- It holds an account of a designated person, has entered into dealings or an agreement with a designated person or has been approached by or on behalf of a designated person; or
  - It knows or has reasonable cause to suspect, that the person is a designated person, or has committed an offence under Part 3 of TAF Law (as outlined above); and the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business

*Money Laundering and Weapons Development (Directions) (Jersey) Law 2012*

24. On 13 January 2012, the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (the “**Directions Law**”) came into force. A link to the Directions Law may be found at **Appendix III (item S.)**.
25. Under the Directions Law, the Minister for External Relations has the power to give a direction to a relevant person. Directions can be given generally, by Order, to all relevant persons or to a specific category of relevant persons. A direction may also be given to a particular relevant person who must comply with the terms of the direction.
26. A direction may be given if one or more of the following conditions are met in relation to a country or territory outside Jersey, namely the:
- FATF advises there is a risk of money laundering or terrorist financing in a country or territory;
  - The Minister for External Relations reasonably believes that there is a risk of money laundering or terrorist financing in a country or territory, by the government of a country or territory, or by persons resident, or incorporated in a country or territory, that poses a significant risk to Jersey; and
  - The Minister for External Relations reasonably believes that the development or production of weapons in a country or territory, or anything that facilitates such development or production, poses a significant risk to Jersey.

27. In relation to transactions or business relationships with the government of, or a person connected to, a particular country or territory, a direction can require a relevant person, to:
- Undertake enhanced CDD measures;
  - Provide information and documents; or
  - Limit or cease a business relationship.
28. Failure to comply with a direction is a criminal offence. No offence is committed where there is evidence that a relevant person failed to comply with a direction but took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with, including following any relevant guidance or code of practice.
29. The Money Laundering and Weapons Development (Directions) (Iran) (Jersey) Order 2013 (“**MLWD Iran Order**”) has been made under the Directions Law. The MLWD Iran Order is the first direction to be issued under Article 6 of the Directions Law and originally came into force on 19 January 2012 for a period of one year. A further direction was issued on the same terms and came into effect on 19 January 2013, and was again issued to all relevant persons. The MLWD Iran Order prohibits relevant persons from entering into or continuing to participate in, any transaction or business relationship with:
- a credit institution incorporated in Iran, including any of its branches wherever located; or
  - the Central Bank of Iran, also known as Bank Makazi Jomhuri Islami Iran.
30. A link to the MLWD Iran Order may be found at **Appendix III (item R.)**.

*Money Laundering (Amendment No. 5) (Jersey) Order 2013*

31. On 2 August 2013, the Money Laundering (Amendment No. 5) (Jersey) Order 2013 was made by the Chief Minister. It came into force on 9 August 2013 and clarifies how a relevant person is to apply enhanced and simplified CDD measures under the Money Laundering Order.
32. Article 15 of the Money Laundering Order now explains the circumstances in which a customer may be considered to have a connection to a country or territory in relation to which the FATF has called for the application of enhanced CDD measures. Where a customer has such a connection, then Article 15 of the Money Laundering Order requires a relevant person to apply enhanced CDD measures.
33. Articles 17 and 18(7) of the Money Laundering Order now allow a relevant person to apply simplified identification measures - in some strictly limited circumstances - to a customer that is a wholly-owned subsidiary of a person that is registered to carry on, and supervised in its conduct of, deposit-taking business, insurance business, investment business, or fund services business.

34. Article 18(3) of the Money Laundering Order now allows a relevant person to apply simplified identification measures to a customer relationship that relates to a pension, superannuation, employee benefit or share option scheme that permits the interest of a member to be assigned to any person after the death of that member, so long as identification measures are applied to the proposed assignee(s). Previously, the Money Laundering Order had provided only for interests to be assigned to a spouse or dependant of a deceased member.
35. Article 18(6A) of the Money Laundering Order now allows a relevant person to apply simplified identification measures to a customer that is: (i) a body corporate which has securities listed on a market that requires timely disclosure of information which is relevant to investors' decisions, and requires holders of securities to be treated in a fair and equitable manner (including disclosing information about the identity and holdings of persons who hold a substantial beneficial ownership interest on a timely basis); or (ii) wholly-owned by such a body corporate.
36. This is in addition to a very similar concession in Article 18(6A) of the Money Laundering Order which refers to securities which are listed on a "regulated market", the practical application of which has been limited to markets in the European Economic Area (the "EEA").
37. Finally, the Order deleted Article 23C of the Money Laundering Order, which had provided for the Minister for Treasury & Resources to give directions in the case of a relationship that had a connection to a country or territory to which the FATF has decided to apply countermeasures. Following the introduction of the Directions Law, this power is no longer necessary.
38. A link to this law may be found at **Appendix III (item P)**.

*Draft Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 201-*

39. As outlined elsewhere in this questionnaire, significant work continues on a consolidation of the Proceeds of Crime Law, Drug Trafficking Offences Law, and money laundering provisions in the Terrorism Law. The insular authorities expect that the Chief Minister will lodge draft consolidation legislation (the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 201- (the "**draft Proceeds of Crime and Terrorism Law**") with the Greffier of the States of Jersey (the Island's parliament) before the end of 2013.

*Draft Money Laundering (Amendment No. 6) (Jersey) Order 201-*

40. Separately, work continues on a further amendment to the Money Laundering Order (the Draft Money Laundering (Amendment No.6) (Jersey Order 201-). Proposals for changes have already been widely consulted on, and the results of that consultation, response and policy to be implemented may be found in a Feedback paper, a link to which may be found at **Appendix III (item 6)**
41. It is anticipated the draft Money Laundering (Amendment No. 6) (Jersey) Order 201- will be in a position to be made in December 2013.
42. Proposed changes are explained elsewhere in this questionnaire. In addition, it is proposed to:

- Put beyond doubt that a relevant person might always make records available to another financial institution or DNFBP, where asked to provide records to a correspondent bank in line with former FATF Recommendation 7 (correspondent banking) or to a relying party in line with former FATF Recommendation 9 (reliance on third parties).
- Require a relevant person to maintain policies and procedures in respect of any financial services business carried on by a subsidiary of that person. These should be consistent with those applied by the relevant person in respect of its financial services business activities.
- Require a relevant person to maintain policies and procedures for identifying and assessing risks that may arise in relation to: the development of new products and services, and new business practices, including new delivery mechanisms; and the use of new or developing technologies - for both new and existing products and services.

43. Jersey legislation now also recognises foundations, separate limited partnerships, and incorporated limited partnerships.

#### *Foundations (Jersey) Law 2009*

44. The Foundations (Jersey) Law 2009 came into force on 17 July 2009. A link to this law may be found at **Appendix III (item I)**.
45. Foundations are neither a company nor a trust but have some similarities to both. They are a distinct and independent legal entity created for a particular purpose and are, in effect, a purpose entity run by a council consisting of at least one regulated person being a trust company services provider based in Jersey and registered with the Commission (a “**qualified member**”). Foundations can exist either with or without beneficiaries. Having a distinct legal personality, they hold assets in their own name like a company holds assets and they can contract with others.
46. Jersey foundations are registered with the registrar of companies (the “**Registrar**”) and he can evidence their existence by issuing a certificate of good standing. The constitutional documents of a foundation will consist of a charter and regulations.
47. The application for incorporation of a Jersey foundation is a regulated activity and must be undertaken by a “qualified person”. A qualified person is a trust company services provider based in Jersey and registered with the Commission.
48. The founder is the person who instructs the qualified person to apply for the incorporation of a Jersey foundation. The founder may reserve rights to himself or to others. His identity need not be a matter of public record but must be held by the service provider.
49. The charter is filed with the Registrar and is open to public inspection. It contains certain required information such as the name of the foundation, its objects and details of any initial endowment of the foundation. Other information can be included in the charter if desired, but is not required.

50. The regulations are not filed with the Registrar and are private however they must be held by the Qualified Member. They must provide for the appointment, replacement and remuneration (if any) of its council members, how the council should operate and for the appointment and continuance of a guardian. The regulations may provide for any other matter, for example, in relation to powers, duties and rights of the council and the beneficiaries.
51. Every foundation will have a council to organise its affairs with similar functions and duties to directors of a company.
52. There are certain administrative requirements such as having a business address in Jersey, and ensuring the name and business address of the foundation appears on written communications. Statutory and financial books and records must be maintained at the business address and must be sufficient to show and explain the foundation's transactions and disclose with reasonable accuracy its financial position. A register must also be kept at the business address of the names and addresses of council members, the guardian and those who have endowed the foundation. The business address of a Jersey foundation will be the address of its qualified member.
53. It is proposed to introduce in 2014 minor revisions to the Codes of Practice for Trust Company Business and the AML/CFT Handbook to clarify existing record keeping requirements expected to be demonstrated by a qualified member in relation to a foundation for which it acts and its underlying interests.

*Separate Limited Partnerships (Jersey) Law 2011 and Incorporated Limited Partnerships (Jersey) Law 2011*

54. Separate laws have been enacted for separate limited partnerships (“**SLP**”) and incorporated limited partnerships (“**ILP**”) in Jersey, which run in parallel with the Limited Partnerships (Jersey) Law 1994 (the “**LP Law**”), pursuant to which traditional Jersey limited partnerships are established. A link to this law may be found at **Appendix III item N**, respectively.
55. The Separate Limited Partnerships (Jersey) Law 2011 (the “**SLP Law**”) came into force on 20 April 2011 and the Incorporated Limited Partnerships (Jersey) Law 2011 (the “**ILP Law**”) came into force on 26 May 2011. A link to these laws may be found at **Appendix III items X. and L.** respectively.
56. Save for certain key differences outlined below, the basic structure of an SLP and ILP is very similar to the traditional Jersey limited partnership.
57. Both types of partnership must have at least one general partner and one limited partner. Both are required to have a partnership agreement although this will not be publicly available. A declaration must be filed with the Registrar of Limited Partnerships in order to establish a SLP or for ILP to be validly incorporated.
58. A SLP is a legal person and is able to transact, hold rights, assume obligations and sue and be sued either in its own name or in the name of its general partner. An ILP also has legal personality and can hold assets in its own name, rather than in the name of their general partner. An ILP is also incorporated and has perpetual succession.

59. There are certain administrative requirements such as having a registered office address in Jersey, at which, inter alia, a register shall be kept showing the full names and address of each limited partner. Accounting records must be kept that are sufficient to show and explain the partnership's transactions and are such as to disclose with reasonable accuracy the financial position of the partnership.

### **Changes to regulatory requirements and guidance**

60. The AML/CFT Handbook is updated from time to time. In particular, it was updated on 1 February 2013 to:

- Facilitate the identification of higher risk countries and the CDD measures to be taken to mitigate effectively risk.
- Clarify the identification measures to be taken to satisfy a requirement in the Money Laundering Order to apply enhanced CDD measures in a case where a customer who is an individual has not been physically present for identification purposes.
- Clarify the identification measures to be taken to satisfy a requirement in the Money Laundering Order to apply CDD measures (including enhanced measures) in a case where there is no face to face contact between the relevant person and the individuals who are concerned with a trust or foundation, or individuals who are the beneficial owners or controllers of a legal body – where the arrangement or legal body which is to be the customer is administered by a regulated trust and company services provider.

61. Additional guidance on the types of country that may present a higher risk and references to sources for each type is now provided in Section 3.3.4 of the AML/CFT Handbook, together with a summary of countries listed by those sources in Appendix D2.

62. Sections 3.4.2 and 3.4.3 of the AML/CFT Handbook now also provide a more comprehensive list of measures to be taken to establish source of funds and source of wealth in a case where enhanced CDD measures must be applied.

63. More recently, Section 4.11 of the AML/CFT Handbook was updated on 17 October 2013. In line with a recommendation made by the IMF, the “source of funds” concession (simplification of identity verification measures) may no longer be applied in any case where a customer is a legal person. With effect from 23 October 2013, this concession was removed entirely from the Handbook for the Legal Sector. Provisions allowing the identity of a customer to be self-certified in some cases by lawyers and accountants were also removed on 23 October 2013 from the Handbook for the Legal Sector and Handbook for the Accounting Sector.

64. Guidance has also been issued in an effort to assist and raise awareness among those relevant persons regulated and supervised by the Commission of: (i) international sanctions; and (ii) the risks of proliferation financing, both to assist relevant persons in complying with domestic legislation.

65. A link to guidance on sanctions may be found at **Appendix III (item 7.)** and a link to guidance on proliferation financing may be found at **Appendix III (item 8.)**



## **Common Understanding**

66. By virtue of a footnote included in the list of third countries that are currently considered as having equivalent AML/CFT systems to the EU (published under the Common Understanding), Jersey may be considered as “equivalent” by Member States of the EU.
67. A link to the Common Understanding may be found at **Appendix III (item 9.)**

## **Global Forum**

68. The findings of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the “**Global Forum**”) review of Jersey were published in October 2011. The review says Jersey’s domestic laws provide a satisfactory framework for the exchange of relevant information and that the Island fully meets the Global Forum’s standard in six of the nine areas under review.
69. One area reviewed was action taken to ensure that ownership and identity information for all relevant entities and arrangements is available to Jersey’s competent authorities. This element was found to be in place.
70. The review concludes that Jersey’s domestic laws generally establish a satisfactory framework to ensure that relevant ownership, identity, and banking information is required to be kept.
71. A link to the Global Forum report may be found at **Appendix III (item 10.)**.
72. Since the date of that review, the Taxation (Accounting Records) (Jersey) Regulations 2013 have come into force. The Regulations address the recommendation of the Global Forum in relation to availability of information in respect of accounting records.

## **Action plan on transparency of legal persons and arrangements**

73. To coincide with the G8 Summit and to share in the G8’s action to enhance transparency on beneficial ownership of companies, Jersey has published its own action plan. A link to the plan may be found at **Appendix III (item 11.)**.
74. Jersey has committed to undertake a general review of corporate transparency, having regard for the development of international standards and their global application, starting with the publication of a pre-consultation paper before the end of 2013. Jersey will undertake this review having regard to the action taken by the UK and the other G8/G20 countries.
75. Jersey already holds a central register of beneficial ownership of companies and regulates and supervises those who form and administer legal persons and legal arrangements, which are required by the Money Laundering Order to maintain up-to-date and accurate information on the beneficial ownership of those for whom they act. All the information held in the Island is available to tax authorities and law enforcement agencies on request.

## Aggressive Tax avoidance

76. The Commission monitors developments in the international debate about tax evasion and aggressive tax avoidance. For example, it wrote to all trust and company services providers on 13 March 2013 in relation to aggressive tax schemes.
77. The Island has established a Sound Business Practice Committee, consisting of members from Government, the Commission and industry. The Committee will look to address sound business practice in the jurisdiction and introduce policies and procedures in relation to areas such as tax avoidance.

## Crown Dependency meetings

78. Joint meetings of regulators, law enforcement and financial intelligence units from each of the Crown Dependencies continue to be held annually to discuss topical issues in relation to money laundering and terrorist financing, both locally and internationally.

## 2.2. Core recommendations

Please indicate improvements which have been made in respect of the FATF Core Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1). References to MONEVAL report should be read as references to the IMF 2009 report on Jersey's compliance with FATF Recommendations.

<b>Recommendation 1 (Money Laundering offence)</b>	
<b>Rating: Largely compliant</b>	
<b>Recommendation of the IMF Report</b>	Amend Articles 34 of the POCL and 30 of the DTOL to: <ul style="list-style-type: none"> <li>• provide for two alternative purposes for the acts of converting and transferring proceeds, namely to avoid prosecution for the predicate offence or to conceal the illicit origin of the funds, and;</li> <li>• to eliminate the purpose requirement for the acts of converting and transferring proceeds of crime.</li> </ul>
<b>Measures taken to implement the Recommendation of the Report</b>	A draft Proceeds of Crime and Terrorism Law is in an advanced stage. It is intended that this will be lodged within the next few months. This draft law eliminates the purpose requirements for the acts of converting and transferring proceeds (i.e. it will be an offence to convert and transfer proceeds no matter what your purpose so it will therefore be an offence to convert or transfer proceeds for the purposes specified above) and also eliminates the purpose requirement for the acts of concealing or disguising proceeds (which is what we believe the second bullet point of the recommendation intends to refer to).
<b>Recommendation of the IMF Report</b>	The defence (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.

<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law retains the defence of adequate consideration but provides that it shall not be available where property or services provided to a person assist that person in criminal conduct, where a person providing property or services to another person knows, suspects or has reasonable grounds to suspect that the property or services will or may assist the other person in criminal conduct or where the value of the consideration is significantly less than the value of the property acquired or, as the case may be, the value of its use or possession. This is intended to ensure that where criminal conduct has actually been assisted or there is a risk that it may be so assisted, the defence of adequate consideration will not apply.
<b>Recommendation of the IMF Report</b>	Amend Article 18 of the TL to cover all material elements of the money laundering provisions of the Palermo and Vienna.
<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law removes the requirement to establish the existence of an arrangement beyond reasonable doubt from the money laundering offences. However, for completeness, an additional offence is included of entering into or becoming concerned in an arrangement knowing or suspecting that the arrangement facilitates, by any means, the acquisition, use, possession or control of criminal property by or on behalf of another person.
<b>Recommendation of the IMF Report</b>	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-lauderer.
<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law provides that it is an offence to acquire, use or have possession or control of criminal property. Property will be criminal property if it constitutes proceeds of criminal conduct (as presently defined) or represents such proceeds, whether in whole or in part and whether directly or indirectly, and the alleged offender knows or suspects that it constitutes or represents such proceeds. The draft law specifically states that for such purposes it does not matter whether the conduct was the conduct of the alleged offender or of another person.
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	In criminal cases the level of proof required is always beyond reasonable doubt. In our experience, proving that property stems from the commission of a predicate offence has not posed such a barrier. For example, money laundering convictions have been obtained in connection with fraud in Nigeria (Bhojwani), multi-million pound VAT fraud in the UK (Michel) and drug trafficking (McFeat, Smith, Howard and Ellis).
<b>(Other) changes since the last evaluation</b>	None.

<b>Recommendation 5 (Customer due diligence)</b>
<b>I. Regarding financial institutions</b>
<b>Rating: Partially compliant</b>

<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Jersey recognises the risk that the simplification of CDD measures may present, as well as the inherently higher level of risk that may be found in some customer relationships in international financial centres.</p> <p>In line with the recommendation made by the IMF, the insular authorities have reviewed provisions in Articles 16 and 17 of the Money Laundering Order which provide that, in some limited circumstances, a relevant person need not identify or verify the identity of a third party (or parties) on whose behalf a customer is acting (simplification of identification measures) where the risk of money laundering or terrorist financing is lower.</p> <p>In order to apply simplified identification measures under Article 17 of the Money Laundering Order, a relevant person must first satisfy itself that its customer is:</p> <ul style="list-style-type: none"> <li>• A financial institution that is subject to the Core Principles and carrying on deposit-taking business, insurance business, investment business, or fund services business; or</li> <li>• A permit holder or certificate holder of a collective investment scheme; and</li> <li>• Subject to prudential, conduct of business and AML/CFT supervision by the Commission.</li> </ul> <p>Where a customer is based outside Jersey, then it will be necessary for the customer to be subject to supervision in a country that applies AML/CFT requirements that are consistent with those in the FATF Recommendations.</p> <p>Under Article 17 of the Money Laundering Order, a relevant person must then consider the particular case of its customer and think it “fit” to apply simplified identification measures. Guidance on the factors to take into account when conducting such a risk assessment is set out in Section 4.10.1 of the AML/CFT Handbook and include:</p> <ul style="list-style-type: none"> <li>• What is known about the customer;</li> <li>• The period of time that the AML/CFT framework has been in place in the country in which the customer is based;</li> <li>• Any existing or previous relationships with the customer; and</li> <li>• The nature of business conducted by the customer, including the geographic location of its customer base, general nature of its customers (e.g. institutional or private), and its business risk appetite.</li> </ul> <p>In order to apply simplified identification measures under Article 16 of the Money Laundering Order, a relevant person must first satisfy itself that its customer is a relevant person and supervised for AML/CFT purposes by the Commission.</p> <p>Where a customer is based outside Jersey, then it will be necessary for the customer to be subject to: requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendations; and supervised for compliance with those requirements.</p> <p>Next, the relevant person must be satisfied that the product offered to its customer is a lower risk product, or product that is controlled by the customer itself presents a lower risk. Guidance in this respect is provided at Section 4.10.5 of the AML/CFT Handbook and the IMF agreed that the particular products referred to appeared to be low risk (paragraph 482 of the report).</p> <p>Under Article 16 of the Money Laundering Order, a relevant person must then also:</p>

- Consider the particular case of its customer and think it “fit” to apply simplified identification measures. Guidance on the factors to take into account when conducting such a risk assessment is set out in Section 4.10.1 of the AML/CFT Handbook.
- Obtain adequate assurance in writing from its customer that it has identified and verified the identity of its underlying customer(s), is required to keep and will keep evidence of identity for those underlying customers, and will provide a copy of that evidence without delay to the relevant person at the relevant person’s request.

For both Articles 16 and 17, the requirement to monitor a relationship with a customer is unaffected.

Based on the above, the insular authorities do not consider that Jersey’s implementation of FATF Recommendation 5 introduces an unacceptable risk that businesses in Jersey may be used by criminals to launder the proceeds of crime or to finance terrorist activities. However, in light of the review, it is proposed to more tightly regulate the circumstances in which simplified identification measures might be applied. The results of the review are summarised in section 4 of a Consultation Paper published by the Commission, a link to which may be found at **Appendix III (item 5)**.

The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at **Appendix III (item 6)**.

In order to apply simplified identification measures to an intermediary, it is proposed that a relevant person must, in addition to existing provisions, record its assessment of the risk of applying such measures to an intermediary and why it is “fit” for it to do so.

In particular, this assessment of risk of applying simplified identification measures will take into account:

- The risk that an intermediary does not apply the necessary identification measures;
- The risk that an intermediary does not keep records, or does not keep them for the necessary period; and
- The nature of the intermediary’s business.

In addition, it is proposed to prohibit the application of simplified identification measures under the Money Laundering Order in a particular case where the intermediary:

- Is considered to present a higher risk of money laundering or terrorist financing (on the basis of the assessment outlined above).
- Has a relevant connection with a country that is subject to a FATF call to apply countermeasures – currently Iran and North Korea.
- Is the “respondent” - where a relevant person provides a “correspondent” banking service to a financial institution (where Article 15(4) of the Money Laundering Order applies).

Law drafting instructions have been prepared and delivered to the Law Draftsman’s office to give effect to these changes.

Proposals to amend provisions that set out the circumstances in which reliance may be placed on identification measures already carried out by another party (distinct from the application of simplified measures) is explained under Recommendation 9 below.

<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Section 4.11 of the AML/CFT Handbook says that a relevant person may consider that it has verified the identity of a customer where initial funding for a particular product or service is received from an account at a bank that is regulated and supervised by the Commission (or equivalent overseas regulatory authority). This provision may be applied by a relevant person only to a product or service that it provides that:</p> <ul style="list-style-type: none"> <li>• Does not permit payments to be received from, or made to, third parties; and</li> <li>• Does not permit withdrawals to be made in cash (except face-to-face by the customer when evidence of identity must be presented); and</li> <li>• Only accepts funds from (and returns funds to) an account held by the customer (solely or jointly with another person) at a bank that is regulated and supervised by the Commission (or equivalent overseas regulatory authority).</li> </ul> <p>This concession may not be applied in a case of a customer that is considered to present a higher risk.</p> <p>In line with the recommendation made by the IMF, the insular authorities have reviewed the scope of the “source of funds” concession and have further limited its use, so that, like in the UK, it no longer applies in any case where a customer is a legal person. The results of the review are summarised in section 7 of a Consultation Paper published by the Commission, a link to which may be found at <b>Appendix III (item 5)</b>.</p> <p>The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p> <p>Section 4.11 of the AML/CFT Handbook was updated on 17 October 2013.</p>
<b>Recommendation of the IMF Report</b>	The authorities should review the permitted exemptions from CDD measures in Article 18 of the Money Laundering Order 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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Article 18 of the Money Laundering Order provides for simplified identification measures to be applied where a customer is:</p> <ul style="list-style-type: none"> <li>• Subject to prudential, conduct of business and AML/CFT supervision by the Commission (or requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendations and supervised for compliance with those requirements).</li> <li>• A body corporate, the securities of which are listed on an “IOSCO-compliant market” (one that requires full, accurate and timely disclosure of information which is relevant to investors’ decisions) or “regulated market” in a Member State of the EEA, or a country that regulates its markets in a way that is equivalent to certain European directives; or</li> <li>• A Jersey public authority.</li> </ul> <p>Article 18 also provides for simplified identification measures to be applied to a person who is authorised to act on behalf of a customer in the course of employment by a person carrying on financial services business which is subject to:</p> <ul style="list-style-type: none"> <li>• Prudential, conduct of business and AML/CFT supervision by the Commission;</li> </ul>

	<p>or</p> <ul style="list-style-type: none"> <li>• Requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendations and supervised for compliance with those requirements.</li> </ul> <p>The application of these concessions is subject to a customer’s (or employer’s) country of residence.</p> <p>Under Article 18 of the Money Laundering Order, simplified identification measures may also be applied in respect of particular products or services, where:</p> <ul style="list-style-type: none"> <li>• A business relationship or one-off transaction relates to a pension, superannuation, employee benefit, share option or similar scheme.</li> <li>• A product offered is a life insurance policy in connection with a pension scheme that contains no surrender value and may not be used as collateral.</li> <li>• In respect of insurance business, a premium is payable in one instalment of an amount not exceeding £1,750, or, where a periodic premium is payable, the total amount payable in a year does not exceed £750.</li> </ul> <p>In line with the recommendation made by the IMF, the insular authorities have reviewed permitted exemptions from CDD measures. In the case of these “product” or “service” concessions, and subject to an assessment of risk, it is possible for a customer to reside in a country that is not in compliance with, or that has not effectively implemented, the FATF Recommendations. This is because it is the nature of the product or service offered that makes the relationship lower risk, rather than who the customer is and where the customer resides.</p> <p>In addition, Article 18(9) of the Money Laundering Order provides that none of the above concessions shall apply in any case where a relevant person suspects money laundering or terrorist financing, or in any situation which by its nature can present a higher risk of money laundering or terrorist financing.</p> <p>The results of the review are summarised in a section 7 of a Consultation Paper published by the Commission, a link to which may be found at <b>Appendix III (item 5)</b>.</p> <p>The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p>
<p><b>Recommendation of the IMF Report</b></p>	<p>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.</p>
<p><b>Measures taken to implement the Recommendation of the Report</b></p>	<p>Article 18(9) of the Money Laundering Order provides that none of the concessions in that article shall apply in any case where a relevant person suspects money laundering or terrorist financing, or in any situation which by its nature can present a higher risk of money laundering or terrorist financing.</p> <p>It is proposed to prohibit the application of simplified identification measures under Article 17 of the Money Laundering Order (which provides for simplified identification measures to be applied in some limited cases) in a particular case where the intermediary is considered to present a higher risk of money laundering or terrorist financing. A similar change is to be made to Article 16 of the Money Laundering Order (which it is intended in future will cover only cases where reliance is placed on an obliged party to have applied identification measures).</p> <p>Details of the proposal may be found in section 6.8.9 of a Consultation Paper published by the Commission, a link to which may be found at <b>Appendix III (item 5)</b>.</p>

	<p>The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p> <p>Law drafting instructions have been prepared and delivered to the Law Draftsman’s office to give effect to this change.</p>
<b>Recommendation of the IMF Report</b>	<p>The authorities should expand the current list of categories of higher-risk customers in the Money Laundering Order to which enhanced CDD must be applied and consider including, for example, private banking and non-resident customers.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Article 15(1) of the Money Laundering Order provides that a relevant person must apply (on a risk sensitive basis) enhanced CDD measures in any situation which can present a higher risk of money laundering or terrorist financing.</p> <p>This is in addition to the customer due diligence measures that are set out in Article 3 of the Money Laundering Order (and applied under Article 13) which require a relevant person to identify and verify the identity of its customer, any third party on whose behalf its customer is acting (and beneficial owners and controllers of that third party), and beneficial owners and controllers of its customer. Article 3 also requires information on the purpose and intended nature of a business relationship to be obtained. These provisions are intended to ensure that a relationship with a customer is operated on a transparent basis.</p> <p>To support the application of Article 15(1) of the Money Laundering Order, Section 3.3.4 of the AML/CFT Handbook provides a comprehensive list of factors – based around country risk, product (or service) risk, delivery risk, and customer specific risk – that are to be taken into account when assessing the risk that is presented by an applicant for business or existing customer. Inter alia:</p> <ul style="list-style-type: none"> <li>• It provides that the value of assets handled by a relevant person will be relevant to an assessment of customer risk, as will the customer’s behaviour. So, for example, a customer requesting undue levels of secrecy may indicate a higher risk.</li> <li>• It lists the types of countries that may be considered to present a higher risk, and states that non-face to face relationships may be attractive to money launderers.</li> <li>• It provides for the type and complexity of a relationship to be considered. For example, the use of overly complex structures, unexplained use of corporate structures and express trusts, and use of nominee and bearer shares may indicate higher risk.</li> </ul> <p>Section 3.3.1 of the AML/CFT Handbook also explains that, in order for information collected on a customer to be “relevant” (a requirement set in paragraph 22 of Section 3.3), a relevant person should understand the reason why a non-resident wishes to establish a relationship with a financial institution in Jersey. This is in addition to requirements for enhanced CDD measures to be applied under Article 15(3) of the Money Laundering Order where a customer has not been physically present for identification purposes and paragraph 147 of Section 4.8 of the AML/CFT Handbook where an owner or controller of a customer (including an individual concerned with a trust or foundation) is not physically present for identification purposes.</p> <p>To the extent there is a concern that non-resident customers, private banking, use of personal asset holding companies, and companies that have nominee shareholders or shares in bearer form may involve a large measure of confidentiality (and lack transparency), the insular authorities consider that a combination of the requirements in Articles 13 and 15(1) of the Money Laundering Order, and guidance in the</p>



	<p>AML/CFT Handbook addresses the risks that are listed as examples in criterion 5.8 of the FATF Methodology (and derived from the Basel CDD paper).</p> <p>Notwithstanding this, the application of a risk-based approach is reviewed from time to time. On 1 February 2013, additional guidance on types of country that may present a higher risk and references to sources for each type was published. A summary of countries listed by those sources is now provided in Appendix D2 of the AML/CFT Handbook. This higher risk was identified in the Island Strategy to Counter Money Laundering and the Financing of Terrorism.</p> <p>Further, the insular authorities have committed to publishing a national risk assessment in 2015. This will take into account the vulnerabilities inherent in products and services offered by relevant persons and form the basis for any necessary changes to Article 15 of the Money Laundering Order that may be identified.</p>
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<b>Recommendation of the IMF Report</b>	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 Money Laundering Order and issue further guidance as needed to limit the practice.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Article 13(1)(a) of the Money Laundering Order provides that identification measures must be applied before a business relationship can be established. Despite this, Article 13(4) of the Money Laundering Order 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:</p> <ul style="list-style-type: none"> <li>• That is necessary not to interrupt the normal conduct of business; and</li> <li>• There is little risk of money laundering or terrorist financing occurring as a result of completing such identification after the establishment of that relationship.</li> </ul> <p>Article 11(3)(f) of the Money Laundering Order says that appropriate policies and controls must be in place to address the risk that is involved in delaying completion of identification measures.</p> <p>In order to facilitate such a review, it is proposed that the policies and procedures referred to in Article 11(3)(f) of the Money Laundering Order must include periodic reporting to the senior management of a relevant person in order that it may be satisfied that there are appropriate policies and procedures in place to address the risk that is involved in delaying completion of identification measures.</p> <p>In practice, it is proposed that periodic reporting would highlight:</p> <ul style="list-style-type: none"> <li>• The number of customers for which verification has been delayed during a period (also expressed as a percentage of the total number of business relationships and one-off transactions) that have been established or carried out during that particular period.</li> <li>• In any case where verification has been delayed for a significant period, the name of the customer, the reason for the delay, the extent to which verification is incomplete, and action that is to be taken to complete identification measures (and by when).</li> </ul> <p>Law drafting instructions have been prepared and delivered to the Law Draftsman’s office to give effect to this change.</p> <p>Details of the proposal may be found in section 8 of a Consultation Paper published by the Commission, a link to which may be found at <b>Appendix III (item 5)</b>.</p> <p>The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p>
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>On 18 January 2010, an amendment to the Money Laundering Order:</p> <ul style="list-style-type: none"> <li>• Introduced a definition of “third party” in Article 1 to confirm that such term should be understood to cover a trust or other legal arrangement; and</li> <li>• Set out in Article 3(7) which persons are to be identified in the case that a relationship is established with a trust or other legal arrangement.</li> </ul> <p>In the case of a legal arrangement, the effect of Article 3 is that identification measures require:</p> <ul style="list-style-type: none"> <li>• The customer to be identified (and that identity to be verified). In the case of a trust this will be the trustee. In the case of a limited partnership, this will be the</li> </ul>

	<p>general partner.</p> <ul style="list-style-type: none"> <li>• Identification of the trust or other legal arrangement.</li> <li>• The nature of the trust or legal arrangement to be understood.</li> <li>• In the case of a trust, the settlor and protector to be identified (and that identity to be verified).</li> <li>• In the case of all legal arrangements (including trusts), a person that has a beneficial interest to be identified (and that identity to be verified), having regard to the risk of that person being involved in money laundering or terrorist financing.</li> <li>• In the case of a trust, a person that is the object of a trust power to be identified (and that identity to be verified), having regard to the risk of that person being involved in money laundering or terrorist financing.</li> <li>• In any case, where a person identified is not an individual, the ownership and control of that person to be understood and each individual who is the person's beneficial owner or controller to be identified (and their identity verified).</li> </ul> <p>On 1 October 2013, additional guidance was published in Sections 4.5.5 and 4.5.6 of the AML/CFT Handbook to assist with the application of identification measures to a relationship in respect of a partnership (including a limited partnership and customary law partnership). This is in addition to guidance published in February 2008 on trusts.</p>
<p><b>Recommendation of the IMF Report</b></p>	<p>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>
<p><b>Measures taken to implement the Recommendation of the Report</b></p>	<p>On 18 January 2010, Article 18(8) of the Money Laundering Order was amended. Article 18(8) now provides that where:</p> <ul style="list-style-type: none"> <li>• A person is authorised to act on behalf of a customer;</li> <li>• The customer is not a relevant person;</li> <li>• The person who is so authorised acts on behalf of the customer in the course of employment by a person carrying on a financial services business; and</li> <li>• The financial services business is subject to prudential, conduct of business and AML/CFT supervision by the Commission or is subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF recommendations and overseen for compliance with those requirements,</li> </ul> <p>then the relevant person need not comply with his or her obligation to identify and verify the identity of that person so authorised.</p> <p>However, the obligation to verify the authority of that person purporting so to act now continues.</p>
<p><b>(Other) changes since the last evaluation</b></p>	<p>Work continues on a further amendment to the Money Laundering Order. Proposals for changes have already been widely consulted on, and the response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p> <p>In particular, it is proposed:</p> <ul style="list-style-type: none"> <li>• To limit the application of CDD measures by open-ended and closed-ended collective investments schemes to cases where shares or units are created by the scheme, but only to the extent that a relevant person is satisfied that a person carrying on investment business applies identification measures to changes in ownership through secondary market trades.</li> <li>• For all “existing customers” (those having a relationship with a relevant person</li> </ul>

	<p>before February 2008), that a relevant person must hold “identification” information and “relationship” information that takes into account its assessment of the risk of that relationship, or have agreed a bespoke remediation plan to obtain such information with the Commission by 31 December 2014.</p> <ul style="list-style-type: none"> <li>• That, in some strictly limited circumstances, simplified identification measures might be applied by a relevant person that is a deposit-taker to a customer that is a lawyer - in respect of any activity carried on by that lawyer that is financial services business (but not otherwise). Currently, simplified identification measures may be applied to a customer who is a lawyer only to facilitate a transaction in immovable Jersey property.</li> </ul>
<b>Recommendation 5 (Customer due diligence)</b> <b>II. Regarding DNFBP<sup>20</sup></b>	
<b>Recommendation of the IMF Report</b>	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Following consultation, the concession previously to be found in Section 4.5 of the AML/CFT Handbook for the Legal Sector was removed with effect from 23 October 2013.</p>
<b>Recommendation of the IMF Report</b>	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Repeal the concession that allows lawyers and accountants to self-certify identification of existing clients.</li> </ul>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Following consultation, the concession previously to be found in Section 4 (former paragraph 97) of the Handbook for the Legal Sector and Section 4 (paragraph 90) of the Handbook for the Accountancy Sector was removed with effect from 23 October 2013.</p>
<b>Recommendation of the IMF Report</b>	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Sustain close supervision of TCBs to improve compliance with CDD.</li> </ul>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Close supervision of trust and company services providers has continued. The Commission does so through a combination of supervisory examinations (widely scoped) and themed examinations.</p> <p>In 2010, the Commission conducted 58 examinations of trust and company services providers. In 2011, it conducted 47 examinations. And in 2012, it conducted 58 examinations. Findings from these examinations are published annually on the Commission’s website and have covered:</p> <ul style="list-style-type: none"> <li>• Business risk assessments and strategy</li> <li>• Risk management systems and controls</li> <li>• CDD and customer profiling, including high profile and politically exposed persons (“PEPS”) and geographic risk</li> <li>• Tax planning</li> <li>• New businesses take on procedures</li> <li>• Suspicious activity reporting</li> <li>• Compliance monitoring programmes</li> </ul>

<sup>20</sup>

i.e. part of Recommendation 12.

	At 30 September 2013, 187 trust and company services providers were registered with the Commission.
<b>(Other) changes since the last evaluation</b>	<p>It is proposed that, in future, Article 17 of the Money Laundering Order (rather than Article 16) should deal with the case of a relevant person who is an accountant or lawyer providing lower risk accounting or legal services to a customer who is a trust and company services provider. Currently, the basis for this provision is explained in Section 5.10.5 the Handbook for the Legal Sector.</p> <p>One substantive change is proposed to existing provisions: a requirement for periodic testing that the trust and company services provider will provide details of underlying customers and a copy of evidence of identity.</p>

<b>Recommendation 10 (Record keeping)</b> <b>I. Regarding Financial Institutions</b>	
<b>Rating: Compliant</b>	
<b>Recommendation of the IMF Report</b>	None
<b>Measures taken to implement the Recommendation of the Report</b>	N/A
<b>(Other) changes since the last evaluation</b>	None.
<b>Recommendation 10 (Record keeping)</b> <b>II. Regarding DNFBP<sup>21</sup></b>	
<b>Recommendation of the IMF Report</b>	The authorities should: <ul style="list-style-type: none"> <li>• Sustain close supervision of TCBs to improve compliance with record keeping requirements.</li> </ul>
<b>Measures taken to implement the Recommendation of the Report</b>	Close supervision of trust and company services providers has continued. The Commission does so through a combination of supervisory examinations (widely scoped) and themed examinations. The Commission conducted 58 examinations of trust and company services providers in 2010, 47 examinations in 2011 and 58 examinations in 2012. Findings from these examinations are published annually on the Commission's website. As part of examinations, the Commission reviews, on a sample basis, records and files held by trust and company services providers. As at 30 September 2013, 187 trust and company services providers were registered with the Commission.
<b>(Other) changes since the last evaluation</b>	None.

<b>Recommendation 13 (Suspicious transaction reporting)</b> <b>I. Regarding Financial Institutions</b>	
<b>Rating: Largely compliant</b>	
<b>Recommendation of the IMF Report</b>	The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU.
<b>Measures taken to implement the Recommendation of the Report</b>	The timeliness of reporting to the JFCU is considered as part of supervision examinations. The self-assessment questionnaire that is used for supervision examinations of persons carrying on investment business and funds services business requests the following to be provided to the Commission: SARs made to the JFCU (during a particular period); and internal reports which did not result in a SAR being made to

<sup>21</sup>i.e. part of Recommendation 12.

	<p>the JFCU (same period). This forms the basis for a review of the timeliness of reporting.</p> <p>Whilst no similar self-assessment questionnaire is used for supervisory examinations of persons carrying on deposit-taking business, two examples below are provided of examinations considering timeliness of reporting.</p> <ul style="list-style-type: none"> <li>• SAR reporting practices were considered as part of a series of AML thematic examinations between 2008 and 2010. Some of the Commission's findings made specific reference to the risk that reporting of suspicions might be unduly delayed.</li> <li>• An onsite examination considered relevant sections of compliance and private banking manuals, as well as the bank's internal SAR form. This raised concern about unnecessary delays in the submission of an external report to the JFCU. The Commission requested the bank to amend its policies and procedures in order to demonstrate full compliance with reporting requirements and in a way that would not adversely affect timeliness of reporting.</li> </ul> <p>In addition, the JFCU now receives close to 50% of disclosures online, increasing speed of response and accuracy of data input.</p>
<b>(Other) changes since the last evaluation</b>	None.
<b>Recommendation 13 (Suspicious transaction reporting)</b>	
<b>II. Regarding DNFBP<sup>22</sup></b>	
<b>Recommendation of the IMF Report</b>	The authorities should continue to conduct on-site monitoring of SAR reporting practices by lawyers, accountants, and estate agents.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Commission has continued its programme of on-site examinations and has routinely asked for copies of any SARs made in the previous 12 months to be made available during visits.</p> <p>Examinations have also considered AML/CFT training, the role of the money laundering reporting officer and AML/CFT policies and procedures, and findings made in relation to suspicious activity reporting where relevant.</p> <p>The following number of visits have been completed for lawyers, accountants and estate agents:</p> <p>2009 – 77 visits  2010 – 76  2011 – 44  2012 – 30  2013 (estimate) – 26</p>
<b>Changes since the last evaluation</b>	None.

<b>Special Recommendation II (Criminalisation of terrorist financing)</b>	
<b>Rating: Largely compliant</b>	
<b>Recommendation of the IMF</b>	Amend Article 2 of the TL to include a reference to international organisations.

<sup>22</sup>

i.e. part of Recommendation 16.

<b>Report</b>	
<b>Measures taken to implement the Recommendation of the Report</b>	Paragraph 2 of Schedule 2 of the TAF Law amended Article 2(1)(b) of the Terrorism Law to read “(b) the use or threat is designed to influence the States of Jersey, the government of any other place or country or an international organization or to intimidate the public or a section of the public; and”. This recommendation has therefore been addressed.
<b>(Other) changes since the last evaluation</b>	None.
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law extends the definition of terrorism to include an act which constitutes an offence under the provisions of Jersey law which give effect to the nine Conventions and Protocols. Following the amendment, those provisions will be listed in a schedule to the Terrorism Law.
<b>(Other) changes since the last evaluation</b>	None.
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law retains reference to a political, religious or ideological cause and also extends the provision (as it has been extended in the UK and the Isle of Man) to include reference to a racial cause. We understand that the IMF accepts that, whilst the provision adds an element not set forth directly in the FT Convention, it is one that a number of countries have adopted to ensure that the generic definition is not used in circumstances where it was not intended. It is considered that the provision will be sufficiently broad so as not to adversely impact Jersey’s ability to successfully prosecute an FT offence.
<b>(Other) changes since the last evaluation</b>	None.

<b>Special Recommendation IV (Suspicious transaction reporting)</b>	
<b>I. Regarding Financial Institutions</b>	
<b>Rating: Largely compliant</b>	
<b>Recommendation of the IMF Report</b>	The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU by financial institutions.
<b>Measures taken to implement the Recommendation of the Report</b>	The timeliness of reporting to the JFCU is considered as part of supervision examinations. The self-assessment questionnaire template that is used for supervision examinations of persons carrying on investment and fund services business requests that the following be provided to the Commission: SARs made to the JFCU (for a particular period); and internal reports which did not result in a SAR being made to the JFCU.



	<p>This forms the basis for a review by the Commission of the timeliness of reporting. Whilst no similar self-assessment questionnaire is used for supervisory examinations of persons carrying on deposit-taking business, two examples are provided above (under R. 13) of examinations considering timeliness of reporting.</p> <p>In addition, the JFCU now receives close to 50% of disclosures online, increasing speed of response and accuracy of data input.</p>
<b>(Other) changes since the last evaluation</b>	None.
<b>Special Recommendation IV (Suspicious transaction reporting)</b>	
<b>II. Regarding DNFBP</b>	
<b>Recommendation of the IMF Report</b>	The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU by DNFBPs.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The timeliness of reporting to the JFCU is considered as part of supervision examinations.</p> <p>The self-assessment questionnaire template that is used for supervision examinations of persons carrying on trust company business requests that the following be provided to the Commission: SARs made to the JFCU (for a particular period); and internal reports which did not result in a SAR being made to the JFCU. This forms the basis for a review by the Commission of the timeliness of reporting.</p> <p>In addition, a current round of themed examinations (distinct from supervisory examinations) for trust company business considers, inter alia, late reporting.</p> <p>The Commission has continued its programme of on-site examinations of lawyers, accountants and estate agents and has routinely asked for copies of any SARs made in the previous 12 months to be made available during visits.</p> <p>Examinations have also considered AML/CFT training, the role of the money laundering reporting officer and AML/CFT policies and procedures, and findings made in relation suspicious activity reporting where relevant.</p>
<b>(Other) changes since the last evaluation</b>	None.

### **2.3. Other Recommendations**

In the last report the following FATF recommendations were rated as “partially compliant” (PC) or “non-compliant” (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

<b>Recommendation 9 (Third parties and introducers)</b>	
<b>Rating: Partially compliant</b>	
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Subject to an assessment of the risk of placing reliance on another party, Article 16 of the Money Laundering Order allows (but does not require) reliance to be placed on identification measures already applied by a third party that is a financial institution or DNFBP – where the third party is regulated and overseen for AML/CFT compliance by the Commission or is subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendations and supervised for compliance with those requirements (referred to as an “<b>obliged party</b>”).</p> <p>On 18 January 2010, Article 16(4)(c) of the Money Laundering Order was amended. It now provides that, where reliance is placed by a relevant person on an obliged party to have carried out identification measures, that relevant person must obtain, in writing, information about:</p> <ul style="list-style-type: none"> <li>• The customer;</li> <li>• Any beneficial owner or controller of the customer;</li> <li>• Any third party for whom the customer is acting;</li> <li>• Any beneficial owner or controller of a third party for whom the customer is acting; and</li> <li>• Any person purporting to act on behalf of the customer,</li> </ul> <p><b>immediately before</b> the relevant person establishes its business relationship or carries out a one-off transaction with the customer.</p> <p>Subsequently, the insular authorities have reviewed other parts of Article 16 of the Money Laundering Order and further changes are proposed. Details may be found in section 5 of a Consultation Paper published by the Commission, a link to which may be found at <b>Appendix III (item 5)</b>.</p> <p>The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p> <p>In line with the IMF recommendation, it is proposed to require a relevant person to test that the obliged party has appropriate policies and procedures in place to apply the identification measures set out in Article 13(1)(a) and (c)(ii) and Article 15 of the Money Laundering Order (or, in the case of an obliged party that is outside Jersey, identification measures that are consistent with those in the FATF Recommendations).</p> <p>To the extent that reliance is placed on an obliged party to keep hold of the evidence of identity obtained under identification measures, it is proposed to also require that a relevant person must periodically test that the obliged party:</p> <ul style="list-style-type: none"> <li>• Does keep the evidence of identity; and</li> <li>• Will provide a copy of that evidence without delay.</li> </ul> <p>It is proposed that the frequency and extent of testing should take account of all relevant factors, including the legislation that applies to the obliged party (e.g. secrecy legislation), and require evidence of identity to be provided.</p> <p>Law drafting instructions have been prepared and delivered to the Law Draftsman’s</p>

	office to give effect to these changes.
<b>Recommendation of the IMF Report</b>	The authorities should limit the concession allowing financial institutions to rely on intermediaries or introducers to conduct CDD in the following cases: a) intermediaries or introducers outside Jersey that could be legally restricted in providing CDD evidence to Jersey institutions;
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The insular authorities have reviewed Article 16 of the Money Laundering Order and changes are proposed. Details of the consultation conducted may be found in section 5 of a Consultation Paper published by the Commission, a link to which may be found at <b>Appendix III (item 5)</b>.</p> <p>The results of the consultation that followed, and response and policy to be implemented may be found in a Feedback paper, a link to which may be found at <b>Appendix III (item 6)</b>.</p> <p>In future it is proposed that eight conditions must be satisfied in order for reliance to be placed by a relevant person on an obliged party to have applied part or all of the identification measures in respect of a particular business relationship or one-off transaction. Many of these conditions are already features of the current regime.</p> <p>The first condition is that the obliged party consents in writing to being relied upon. The second condition is that identification measures have been applied by the obliged party in the course of an established business relationship or one-off transaction.</p> <p>The third condition is that the relevant person immediately obtains in writing the information found out by the obliged party as a result of it having applied the identification measures specified in Article 3(2)(a) to (c) of the Money Laundering Order (or in the case of an obliged entity outside Jersey, measures that have been applied in line with former FATF Recommendation 5).</p> <p>The fourth condition is that the relevant person obtains adequate assurance in writing that, in furtherance of its obligations under Article 13(1)(a) and (c)(ii) and Article 15 of the Money Laundering Order, the obliged party has applied the identification measures specified in Article 3(2)(a) to (c) of the Money Laundering Order, has not itself relied upon another party to have applied any of those measures under Article 16, and has not applied simplified identification measures under Article 3(5) or Article 18.</p> <p>Where an obliged party is a person who carries on equivalent business, the assurance should confirm instead that the obliged party has applied CDD measures in line with former FATF Recommendations 5 and 6, has not relied upon another party to have applied any of those measures under former FATF Recommendation 9, and has not applied simplified identification measures under former FATF Recommendation 5.</p> <p>To the extent that reliance is placed on an obliged party to keep hold of the evidence obtained under identification measures, the fifth condition is that the relevant person obtains adequate assurance in writing that the obliged party will:</p> <ul style="list-style-type: none"> <li>• Keep that evidence until agreed otherwise with the relevant person; and</li> <li>• Provide to the relevant person at its request, and without delay, a copy of that evidence.</li> </ul> <p>The sixth condition is that the relevant person tests that the obliged party has appropriate policies and procedures in place to apply the identification measures set out in Article 13(1)(a) and (c)(ii) and Article 15 of the Money Laundering Order (or, in the case of an obliged party that is outside Jersey, identification measures that are consistent with those in the FATF Recommendations).</p> <p>To the extent that reliance is placed on an obliged party to keep hold of the evidence</p>

	<p>of identity obtained under identification measures, the seventh condition is that a relevant person must periodically test that the obliged party:</p> <ul style="list-style-type: none"> <li>• Does keep the evidence of identity; and</li> <li>• Will provide a copy of that evidence without delay.</li> </ul> <p>The frequency and extent of testing should take account of all relevant factors, including the legislation that applies to the obliged party (e.g. secrecy legislation), and require evidence of identity to be provided.</p> <p>The eighth condition is that, immediately before placing reliance, the relevant person assesses and documents in writing why it is fit for it to place reliance on the obliged party. This assessment should take into account the greater money laundering or terrorist financing risk that will be present where an obliged party does not:</p> <ul style="list-style-type: none"> <li>• Apply the necessary identification measures;</li> <li>• Disclose complete and accurate information to the relevant person collected through the application of those measures; or</li> <li>• Keep records, or not keep them for the necessary period.</li> </ul> <p>Separately, the assessment should also consider the risk that an obliged party will not provide without delay to the relevant person a copy of the evidence of identity requested, e.g. because of legal impediments.</p> <p>Law drafting instructions have been prepared and delivered to the Law Draftsman's office to give effect to these changes.</p> <p>The authorities consider that the cumulative effect of these conditions will be to prevent reliance being placed by a relevant person in a case where an obliged party is legally restricted in providing CDD evidence to Jersey institutions.</p>
<b>Recommendation of the IMF Report</b>	b) certain domestic DNFBBs until newly-introduced AML/CFT requirements have been fully implemented.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>See above.</p> <p>The authorities consider that the cumulative effect of these conditions will be to prevent reliance being placed on any obliged party that does not apply identification measures in line with Article 13 of the Money Laundering Order.</p>
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>In one particular case, it is proposed that it should continue to be possible for a relevant person to place reliance on a party that carries on business outside Jersey that is not subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendations and/ or not supervised for compliance with those requirements.</p> <p>This case – which is modelled on revised FATF Recommendation 17 - is where a party is part of the same financial group as a relevant person, where it is proposed that reliance might be placed on that group party, so long as:</p> <ul style="list-style-type: none"> <li>• The financial group applies: <ul style="list-style-type: none"> <li>o CDD and record-keeping requirements in line with the Money Laundering Order; or</li> <li>o CDD and record-keeping requirements in line with former FATF Recommendations 5, 6 and 10; and</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>o Programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CFT purposes.</li> <li>• The effective implementation of those group CDD and record-keeping requirements and AML/CFT programmes is supervised at a group level by an overseas regulatory authority.</li> </ul> <p>Each of the eight conditions outlined above must also be satisfied in order for reliance to be placed by a relevant person on a group party to have applied part or all of the identification measures in respect of a particular business relationship or one-off transaction.</p> <p>Law drafting instructions have been prepared and delivered to the Law Draftsman's office to give effect to these changes.</p>
<b>(Other) changes since the last evaluation</b>	None.

<b>Recommendation 12 (DNFBP – R 6, 8 &amp; 11)</b>	
<b>Rating: Partially compliant</b>	
<b>Recommendation of the IMF Report</b>	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.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Commission has continued with its programme of on-site examinations of lawyers, accountants and real estate agents as outlined below:</p> <p>2009 – 77 visits  2010 – 76  2011 – 44  2012 – 30  2013 (estimate) – 26</p> <p>The Commission's approach has been to initially undertake a high number of "outreach" examinations designed to raise awareness and test a number of key areas including:</p> <ul style="list-style-type: none"> <li>• Business risk assessment and strategy</li> <li>• AML/CFT policies and procedures</li> <li>• Staff training</li> <li>• Reporting and governance</li> <li>• Suspicious activity reporting</li> </ul> <p>Whilst this approach continues in respect of newly registered entities, follow up examinations of other lawyers, accountants and real estate agents now focuses more on implementation and effectiveness by way of testing compliance monitoring arrangements and performing customer file reviews.</p>
<b>(Other) changes since the last evaluation</b>	None.

<b>Recommendation 14 (Protection &amp; no tipping off)</b>
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<b>Rating: Partially compliant</b>	
<b>Recommendation of the IMF Report</b>	The law should be amended to limit protection for those reporting suspicious transactions to those acting in good faith.
<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law limits protection for those reporting suspicious transactions to those acting in good faith.
<b>Recommendation of the IMF Report</b>	The tipping-off offense should be broadened by removing the limitation referring to situations that might prejudice an investigation.
<b>Measures taken to implement the Recommendation of the Report</b>	The draft Proceeds of Crime and Terrorism Law removes from the tipping-off offence the limitation referring to situations that might prejudice an investigation. It also provides that regulations may be made setting out circumstances in which it shall not be an offence to disclose information (such as, for example, sharing information intra-group or with the JFSC).
<b>(Other) changes since the last evaluation</b>	None.

## 2.4. Specific Questions

1. Please give details of your assessment of the main money laundering risks and identified methods for laundering proceeds in Jersey, highlighting any typologies and evolving trends since the last evaluation.

Jersey is a low crime jurisdiction and has seen a falling crime rate over recent years.

When examining the main money laundering risks, methods, typologies and trends in Jersey, the difference between locally generated funds and those generated overseas and laundered through the Island's financial institutions needs to be recognised.

### *Main risks*

The main risks (vulnerabilities) identified by the JFCU that facilitate the laundering of criminal proceeds are:

- Customer identification – non face to face relationships. A large amount of business conducted in Jersey is not face to face and is therefore heavily reliant on introducers and intermediaries.
- A sophisticated and professional trust sector. The anonymity previously offered by trust structures was attractive to launderers, and extra diligence was needed to ensure against such structures and services being abused. Changes around requirements to identify the “ultimate beneficial owner” have been a positive factor.
- Leading jurisdiction. As a leading financial centre with close ties to the UK and easy access to London, a stable currency, and well-established global connections, Jersey is very attractive for sound and legitimate business. Unfortunately such prestige attracts launderers seeking to add a veneer of respectability to structures and business relationships.
- The global reach of Jersey financial services. Jersey's financial services reach every corner of the globe and hence its institutions exposed to a wide variety of cultures and business structures. Its global presence, together with its attractiveness as a prestigious and professional centre, raises Jersey's risk exposure profile across a number of geographic areas which professionals need to understand in terms of the different AML/CFT risks posed.
- PEP / Corruption. With the global reach of Jersey's financial services, this can make it difficult for institutions to identify PEPs, their close relations and associates. Additionally, a large number of individuals and companies are now believed to hold funds taken from Arab Spring countries (previously recognised regimes). There are international efforts to retain and return these funds.

All of the above emphasise the need for a high standard of CDD measures to be applied throughout the industry. One area of concern that has still to be resolved is what happens to declined business, and whether criminals approach other institutions in Jersey or look to alternative jurisdictions.

### *Significant money laundering methods (trends)*

There are a number of money laundering techniques that have been utilised against financial institutions in Jersey by money launderers over the last two years:

- Abuse of trusts, including use of dummy settlors and false or pseudo beneficiaries.
- Exertion of undue influence by relatively large clients over directors of relatively small service providers.
- The use of complex multi-jurisdiction structures of corporate entities and/or trusts of which a local institution is only one small part.
- Drugs (local). Organised crime groups (OCGs) will persist in targeting Jersey whilst they can benefit from the local high street prices and the command of large profits. The local drugs market is linked mainly to the UK: drugs are imported from the UK and the proceeds from the sale of these drugs are returned to the UK. Local drug users undertake a number of petty crimes, shoplifting, benefit fraud, break and entry etc in order to fund their drug habit and, in turn, these funds are used to purchase drugs locally which are smuggled in mainly from the UK (or via France) and the funds are moved to the UK either via couriers, wire transfers, or funds are paid directly into UK accounts.

There is growing evidence that links to European drugs suppliers are on the increase with the growing diversity of the Island's population.

The drugs market has changed significantly in recent years, with OCGs now profiting from the trend towards new psychoactive substances such as methedrone. The real extent of this problem locally is not currently understood. Language difficulties also continue to complicate intelligence gathering opportunities that are focused on European syndicates.

#### *Evolving Risks – Trends*

- Use of Jersey and UK accounts to make small cash deposits which are then used to purchase drugs.
- Use of cash deposits via Jersey banks into UK accounts, or vice versa. An on-going investigation has identified significant cash deposits being made in the UK but paid into Jersey accounts. It is believed that this has helped the suspects to bypass CDD measures in Jersey.

#### *Evolving Risks – Trends (area to be monitored)*

- Cash couriers moving tainted funds out of the Island.
- Emerging trend of the use of pre-paid travel cards. In a recent drug trafficking and money laundering investigation it was ascertained that the criminal organisation made use of pre-paid currency cards to launder their proceeds of drug trafficking. It was identified that the group used approximately 25 prepaid currency cards which were purchased locally to launder over £130,000. Funds were loaded onto the cards locally by several individuals and subsequently withdrawn in the UK, Spain and Thailand. The investigation resulted in four convictions for money laundering and two convictions for drug trafficking.

#### *Other areas of interest*

- Tax. A large number of tax-related SARs relate to clients making off-hand comments about not wanting their own taxation authority to be aware of funds held locally or making enquires as to the bank's /Island's policy on sharing account information with other jurisdictions.

Others are linked to the operation of tax amnesties in other jurisdictions – where customers take advantage of the amnesty.

Suspensions have also been raised when customers request funds to be transferred to other accounts in a different jurisdiction or to be withdrawn in cash. Generally these SARs relate to personal accounts of relatively low value.

- Terrorism. Jersey's financial services reach every corner of the globe and it is from these global connections that vulnerability to terrorism financing arises (rather than local criminal / terrorism activity). The vulnerabilities that apply to money laundering equally apply to terrorist financing.

All the SARs disclosed under terrorism legislation relate to the disclosing institution having conducted CDD measures and identifying a possibly link between their client and a terrorist organisation or a jurisdiction linked to State-sponsored terrorism.

This calls for an on-going commitment by the Commission and law enforcement to ensuring that high standards of CDD are conducted by industry - as opposed to other jurisdictions that may be directly affected by locally funded terrorist acts.

#### *Evolving Risks /Trends*

- Following the Arab Spring, terror networks have taken advantage of the unstable region to spread influence and create new bases for attacks. There have been terrorist attacks on allied forces, local police forces and the general population in a number of Arab Spring countries, all of which may lead to further funds being collected and washed through financial institutions, including those in Jersey.

#### *Island Strategy*

When the first Island Strategy to counter Money Laundering and the Financing of Terrorism was published in October 2008 it was the first time that vulnerabilities had been identified, recorded and presented in a formal document. Historically, the Island has been very proactive in identifying and addressing vulnerabilities. For example, trust and company services providers have been subject to requirements set out in the Money Laundering Order since 1999, and a mechanism to oversee compliance



with those obligations has been in place since 2002 - both ahead of most other jurisdictions. This partly reflects the size and importance of this sector in Jersey, but also the risk that companies and trusts might be used in money laundering or terrorist financing.

The current Island Strategy identifies three vulnerabilities.

- Sections within a number of business sectors - in particular smaller less well-resourced businesses - are considered to have an inadequate awareness of obligations under legislation to counter money laundering and terrorist financing. Jersey's legislative framework is carefully designed to ensure that persons carrying on financial services business (and those employed by such persons) play their part in the global fight against money laundering and terrorist financing. An inadequate knowledge of statutory obligations will hamper the Island's AML/CFT efforts.
- Sections within a number of business sectors - in particular, smaller less well-resourced firms - are considered to have an inadequate awareness of the money laundering and terrorist financing risks inherent in: the services or products that they provide; the type of customer/client involved; how the service or product is delivered; and, where the service or product is delivered to. Potentially, this heightens the risk that such businesses may be targeted by money launderers or terrorist financiers and that businesses may not identify their involvement in money laundering or terrorist financing. This can hamper Island AML/CFT efforts.
- A business' systems and controls to prevent and detect money laundering and terrorist financing - and consequently the Island's AML/CFT efforts - may be compromised where persons carrying on financial services business do not properly factor in the need for specialist resources or additional systems and controls (including policies and procedures) to deal with the risks that are inherent when beneficial owners and controllers of customers are connected to higher risk jurisdictions or a customer conducts activities in such a jurisdiction. Persons carrying on financial services business may be tempted to take on such business (without being properly equipped to do so when substantial fees and commissions are available).

The latter vulnerability has emerged in the current economic climate and follows on from an increasing tendency of persons carrying on financial services business to seek business in new markets, which often includes jurisdictions that are considered to present higher money laundering and terrorist financing risks. Such vulnerabilities may be exacerbated for a variety of reasons. These may include, for example, a lack of specialist resources or insufficiently developed systems and controls to deal with additional risks.

The Island Strategy sets "goals" to address vulnerabilities.

*2. Please give details of any convictions for money laundering achieved since the last evaluation, and in particular of any autonomous convictions.*

### **Money Laundering Convictions**

#### **Michel (2010) (third party laundering)**

Peter Wilson Michel was convicted in 2007 of 9 counts of money laundering contrary to Article 32(1) of the Proceeds of Crime Law. A confiscation order was made for £9.7 million.

An appeal against this conviction was dismissed by the Court of Appeal, on one ground, unrelated to the statutory regime, but the Judicial Committee of the Privy Council upheld the appeal on one ground and recommended that Her Majesty quash the conviction and remit the case to the Court of Appeal to consider a retrial.

A retrial was ordered and a fresh 9 count indictment was brought. However, Mr Michel pleaded guilty in 2010 to 7 of the 9 counts of assisting another to retain the benefit of criminal conduct contrary to Article 32(1) of the Proceeds of Crime Law. The remaining counts were not pursued by the Crown.

Sentence: 4 years imprisonment in respect of each count, concurrent.

A confiscation order was made for £6,528,707.

Mr Michel was disqualified from acting as a company director for 6 years (pursuant to Article 78 of the Companies (Jersey) Law 1991 (the "**Companies Law**"). A link to the Companies Law may be found at **Appendix III (item C.)**.

Bhojwani (2010 – self laundering)

Converting the proceeds of criminal conduct, contrary to Article 34(1)(b) of the Proceeds of Crime Law (Counts 1 and 3)

Removing the proceeds of criminal conduct from the jurisdiction of Jersey, contrary to Article 34(1)(b) of the Proceeds of Crime Law (Count 2)

The defendant, an Indian national, made a criminal fortune of almost US\$40 million selling vehicles to the Nigerian Government under two separate contracts in 1996 and 1997 through a Panamanian shelf company. The defendant kept his own proceeds of this crime at Bank of India Jersey from 1997 until 20 October 2000, when the Financial Times ran a major exposé on Nigerian government corruption under President Abacha in which it revealed that the Swiss authorities had launched a money laundering investigation and had identified coded Swiss accounts into which the defendant knew he had paid millions in bribes in 1996. The FT reported that some offshore jurisdictions were leading the way in combating money laundering, and that Jersey had frozen an account it had identified on its own initiative. That news was repeated on the front page of that day's edition of the Jersey Evening Post.

In response to the news of the money laundering investigations, the next working day, Monday 23 October, the defendant committed the first of three money laundering offences by converting the balances of the bank accounts at Bank of India Jersey into freely negotiable bankers' drafts in a total sum of \$43.9 million. He then committed the second money laundering offence by having the drafts couriered out of Jersey. The drafts remained out of the banking system until 2 November when the defendant committed the third money laundering offence by converting the drafts by paying them into the accounts at Bank of India Jersey of three different front companies owned by him. Each conversion and the removal was done with the purpose of avoiding a Jersey prosecution and/or a Jersey confiscation order.

Sentence: 6 years imprisonment on each count concurrent. £22,559,560.33 was returned by Jersey to the Nigerian authorities, with the agreement of the Nigerian government, from the funds confiscated from Mr Bhojwani.

McFeat, Smyth and Howard (2013 – third party laundering)

McFeat: Assisting another to retain the benefit of drug trafficking contrary to Article 37 of the Drug Trafficking Offences Law (1 count)

Smyth: Assisting another to retain the benefit of drug trafficking contrary to Article 37 of the Drug Trafficking Offences Law (1 count)

Howard: Assisting another to retain the benefit of drug trafficking contrary to Article 37 of the Drug Trafficking Offences Law (1 count)

Between 2010 and 2012, a conspiracy existed between various parties, including Liam Norris, to import commercial quantities of cannabis resin into Jersey from the UK. McFeat, Smyth and Howard entered into an arrangement whereby they assisted Norris to retain the proceeds of drug trafficking by exchanging Sterling into Euros and loading money onto pre-paid travel cards. The monies were then withdrawn in Staffordshire (UK) and Spain.

Over the relevant period, McFeat exchanged over £74,000 into Euros and Smyth and Howard exchanged in excess of £20,000 and £27,000 respectively into Euros. McFeat also loaded over £5,000 onto a pre-paid card in his name whilst Smyth and Howard loaded over £13,000 and £17,000 respectively onto pre-paid cards in their names.

Sentence:       McFeat – 18 months imprisonment  
                  Smyth – 12 months imprisonment  
                  Howard – 180 hours community service

Ellis (2013 – third party laundering)

Assisting another to retain the benefit of drug trafficking, contrary to Article 37 of the Drug Trafficking Offences Law (1 count)

Julie Sharon Ellis, between 1 May 2010 and 29 August 2012, in the Island of Jersey, entered into or was otherwise concerned in an arrangement whereby the retention or control by or on behalf of Liam Norris

(her son), of the said Liam Norris' proceeds of drug trafficking was facilitated, knowing or suspecting that the said Liam Norris carried on or had carried on drug trafficking or had benefited from drug trafficking. Ellis changed £25,133 from sterling into euros at various post offices and co-operatives in Jersey.

Sentence Ellis was convicted and is due to be sentenced on 19 November 2013

Figueira (2013 – third party laundering)

Assisting another to retain the benefit of drug trafficking, contrary to Article 37 of the Drug Trafficking Offences Law (2 counts)

Teresa Fatima Goncalves Figueira, between 28 July 2005 and 25 November 2005 (count 1), and between 20 September 2005 and 31 October 2005 (count 2), in the Island of Jersey, entered into or was otherwise concerned in an arrangement whereby the retention or control by or on behalf of a person or persons unknown, of the said person or persons unknown proceeds of drug trafficking was facilitated, knowing or suspecting that the said person or persons unknown carried on drug trafficking or had benefited from drug trafficking.

Count 1 related to eight payments made in the relevant period totalling £14,900 which Figueira sent from different Post Offices to Portugal. Count 2 related to unexplained deposits in Figueira's bank account in the relevant period totalling £5,150. The total amount laundered by Figueira was £20,050.

Sentence: Figueira pleaded guilty to both counts and is due to be sentenced on 8 November 2013.

**Money Laundering Investigations/Other Relevant Cases**

Gichuru and Okemo

Former Nambale MP Chris Okemo and former Kenya Power boss Samuel Gichuru are currently the subject of extradition proceedings. They are wanted in the Island of Jersey for allegedly laundering sh900 million and also face fraud and abuse of office charges. £3 million in assets is currently frozen in Jersey.

Michel (2011)

Perverting the Course of Justice (1 count)

Between 1st July 2001 and 31st October 2009 Justin Peter Michel attempted to pervert the course of public justice, namely the investigation of the assets of his father Peter Wilson Michel, the applications for a *saisie judiciaire* over those assets, and the confiscation of Peter Wilson Michel's proceeds of criminal conduct, by performing acts which had a tendency to pervert the said course of justice, namely (i) accepting from Peter Wilson Michel the transfer to him of assets which were subject to the investigation; (ii) falsely representing to HM Attorney General that the transfers to himself were payment for legal services which he had provided to Peter Wilson Michel; (iii) falsely representing to HM Attorney General that transfers to himself of shares in certain companies were payment for services provided by him in respect of those companies.

Sentence: 15 months (the defendant was also struck off as a Jersey Advocate).

Warren

On 5 November 2013, The Royal Court of Jersey ordered Curtis Warren to pay a confiscation order of £198 million in respect of his benefit from a career of international drug trafficking that started in 1991. The confiscation order was made primarily on the basis that Warren has successfully trafficked cocaine from South America to Europe on many occasions. The prosecution were able to show that Warren laundered £10-15 million per week as a result of his cocaine business in ways that left his profits untraceable and hidden around the world. The prosecution was able to show that Warren had taken advantage of companies to hide his wealth and reinvest some of it in property and other investments. The confiscation order is the result of a complex and difficult financial enquiry and is believed to be the biggest confiscation order in the British Isles.

*3. R.26&30: Since the last evaluation, has the JFCU examined possible new ways to enhance its performance in terms of cases for investigation and asset recovery, as recommended in the last evaluation report? Also, have the human resources of the Intelligence Wing of the JFCU been increased to ensure that its functions are performed effectively?*

In early 2009, the JFCU commissioned an informal internal efficiency and effectiveness review with

regard to business processes to streamline, as far as possible, process with an external consultant. The recommendations obtained as a result of this review were implemented, demonstrating that the JFCU has been keen to enhance the effective use of resources.

In respect of the JFCU examining new ways to enhance its performance to identify cases for investigation and asset recovery, the new Detective Sergeant position referred to below provides the Operations Wing with an early criminal investigation assessment on existing and incoming cases.

Jersey has also developed a strong, well-established tri-partite working structure involving the JFCU, Commission and Law Officers' Department which provides a forum to assess the potential for investigation and asset recovery activity.

In line with IMF recommendations, the JFCU also commissioned an extensive update of its data base 'iFiS'. The old 'iFiS' data base allowed for the collection of statistics relating to disclosures (SARs), but did not allow the collection of data relating to the analysis and dissemination of the intelligence received. This limited how the JFCU could show its effectiveness and efficiency in combating ML and FT.

The new 'iFiS' data base system allows for the comprehensive collection of statistics relating to the whole SAR process from receiving disclosures through to analysis and dissemination.

'iFiS' data base updates and additional features:

#### **Receiving of intelligence**

- New electronic disclosure process, allowing for a consistent approach to the grading of new disclosures, including identification of those disclosures requiring urgent action (code 1). iFiS now also records if the disclosure is of an acceptable standard and if worthy of recording as a typology.
- Greater detail recorded on requests for assistance, including the requesting organisation, country and if it came via Egmont, FinNet etc.

#### **Analysis of intelligence**

- Recording of PEPs
- Improved non consent process, including an improved sign off and review process, ensuring that non consents are regularly reviewed.
- Recording of checks conducted by officers in relation to a disclosure, recording the type of check – internet, UK Police National Computer, local data bases... or if the check has been conducted with another country or organisation and if the check was conducted via Egmont, FinNet. Any corresponding result, hit or no trace, is also recorded.

#### **Dissemination of intelligence**

- ACTIONS - every SAR now has to have a corresponding action to 'share intelligence'. The system then records if the intelligence is shared or not:
  - o If YES, who with and by what means e.g. Egmont.
  - o If NO, why not.
- This allows analysis of reasons why intelligence is not shared. Actions are also recorded by date of creation, last review time and if there is any feedback gained when intelligence was shared.
- The signing off of a file is now improved, including the reason for sign off.
- All documentation is now scanned and stored in iFiS.
- The production of statistics has also been improved, allowing for the production of data tables at the click of a button.

The JFCU now receives close to 50% of disclosures online, increasing speed of response and accuracy of data input.

The Operations Wing now (for the first time) has a crime analyst and also a forensic accountant support officer. The analyst in operations is (again for the first time) in the position to produce comprehensive statistics on the operations work load. Retrospective analysis is also being conducted to identify data from previous operations jobs including typologies.

The following represent additional resources obtained to maintain an effective unit and to continue to

investigate complex and high value financial crime. The resources were secured after the IMF inspection.

**One Detective Sergeant** – To assist in the initial process of the vetting, management and distributing of incoming SARs previously undertaken by one Detective Sergeant, and to provide Operations Wing supervision and early criminal investigation assessment on existing and incoming cases.

**One financial analyst** – This reflects the growth in analytical work required in gathering statistical data for the FIU function (another area which received IMF comment – recommendation 32 which received a rating of Largely Compliant).

**Four financial crime investigators** – To recognize the growth in the SAR reporting regime and to allow for further investigative response to the operations side who continue to play a crucial role in assisting with investigations led by the Attorney General as well as those generated through normal States of Jersey Police, and Customs & Immigration Service investigations.

**One accountancy support** –in-house accountancy support to assist in the assessment of SAR intelligence and the complex cycle of financial transactions identified, as well as providing early guidance, analysis and preparation in evolving criminal investigations. The in-house accountant undertakes preparatory work in advance of the appointment of forensic accountants.

**Pending matters:**

Legal support – dedicated legal support through an in-house legal adviser will provide appropriate support to the team. At this time a recruitment process is underway, with a view to appointment in Spring 2014.

*4. Are there any measures in place to enable competent authorities (including law enforcement authorities in their investigations) to identify the real beneficial owner in respect of assets held by protected cell companies and exchange information with foreign counterparts upon request ?*

The concept of cell companies was first introduced to Jersey in February 2006. In addition to the widely recognised structure of a protected cell company, Jersey also introduced a completely new concept – the incorporated cell company.

The key issue which differentiates both types of cell company from traditional (non-cellular) companies is that they provide a flexible corporate vehicle within which assets and liabilities can be ring-fenced, or segregated, so as only to be available to the creditors and shareholders of each particular cell.

A protected cell company (“**PCC**” or “**cell company**”) is a single legal entity within which there may be established one or more protected cells. Each protected cell, despite having its own memorandum of association, shareholders and directors, as well as being treated for the purposes of the Companies Law as if it were a company, does not have a separate legal identity from the PCC itself. Accordingly, where a cell wishes to contract with another party, it does so through the PCC acting on its behalf. In order to ensure that creditors and third parties are aware of this position, a director of a PCC is under a duty to notify the counterparties to a transaction that the PCC is acting in respect of a particular cell. A director who fails to make this notification and to accurately reflect this in the minutes of the PCC or protected cell is guilty of an offence under Article 127YR(3) of the Companies Law.

Under Article 127YDA(1) of the Companies Law, a cell of a PCC shall have the same registered office and secretary as the protected cell company. That registered office must be in Jersey.

A cell of a PCC is created on the day specified in the certificate of recognition in relation to the cell as being the date on which the cell was created.

Article 2 of the Control of Borrowing (Jersey) Order 1958 (the “**COBO**”) provides that a body corporate incorporated under the law of Jersey shall not, without the consent of the Commission:

- for any purpose issue any shares; or
- admit any person to membership otherwise than by reason of the issue or transfer of shares.

A link to the COBO may be found at **Appendix III (item D.)**.

The Commission administers the COBO and considers shares issued by a cell of a PCC to be shares that are issued by a constituent part of a body corporate. Accordingly, at the time that an application is made for a cell to be granted a certificate of recognition under the Companies Law (i.e. to be created), the Commission will request information on any individual who it is known by the applicant at the time will

hold an interest of 10% or more of the shares of the cell before giving its consent under the COBO. The COBO does not limit the factors that the Commission may consider in making the decision as to whether or not consent will be given in a specific case. Rather, the Commission is provided with absolute discretion. In practice, it expressly asks for information on date of birth, occupation, address, and place of birth of shareholders.

Article 12 of the COBO further provides that the Commission may grant its consent subject to conditions. In addition to the initial disclosure, the conditions will include the requirement to seek and obtain the Commission's prior approval to any subsequent changes to the ownership of that cell. If, however, the cell is provided with any services by a registered trust and company services provider, or the combined effect of all changes to the ownership of the cell is that any individual holds less than 25 per cent of the shares of the cell, an exemption from seeking and obtaining such prior approval applies.

In addition, the PCC and each cell are required to have a registered office in Jersey (which will be the same address). The provision of a registered office or business address for a company by way of business is a regulated activity pursuant to Schedule 2 of the Proceeds of Crime Law. As such, trust and company services providers are subject to the CDD measures of the Money Laundering Order 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 PCC. In the case of a PCC, the Commission considers that this will include information on the cell company and all of its constituent parts (the cells).

The provision of a registered office service is covered in the sector specific section of the AML/CFT Handbook for trust company business. Paragraph 57 of that section says that (save where a statutory exemption is available) a relevant person that is to provide an address to a company must collect relevant identification information on the persons who are the beneficial owners and controllers of the company before the time that the address is first provided and then subsequent to provision of that address (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided). As explained above, in the case of a PCC, this will include information on the cell company and all of its constituent parts (the cells).

All records delivered to the Registrar are accessible by the public, including online. Through the information contained in those records, law enforcement and other competent authorities are able to link a legal entity with a specific trust and company services provider, thus locating the party charged with responsibility for ascertaining and assessing beneficial ownership information.

With respect to beneficial ownership information maintained by trust and company services providers, Article 8 of the Supervisory Bodies Law grants the Commission a wide range of powers to access any information and documentation held by trust and company services providers. Pursuant to the provision, the Commission may require the production of information, the provision of answers to questions posed, and access to premises. Law enforcement may apply for a court order to access any information and documentation held by the trust and company services provider.

In contrast, an incorporated cell of an incorporated cell company is a completely separate legal entity, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. As a result of Article 127YD(1)(b) of the Companies Law, a cell of an incorporated company is a company and treated as such for the purpose of the COBO and application of Article 2 and 3 of the Money Laundering Order.

*5. SR. IX: Has the disclosure system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering and terrorist financing been implemented? Please provide any relevant information and statistics to demonstrate the effective implementation of the system.*

The Customs and Excise (Jersey) Law 1999 (the “**Customs and Excise Law**”) was amended in 2009 to include cross border cash measures. A link to the Customs and Excise Law may be found at **Appendix III (item F.)**. Former FATF Special Recommendations IX highlights the requirement for countries to have measures in place to detect the physical cross border transportation of money including a declaration system or other disclosure obligation. In the main, countries have adopted a declaration system whereby

passengers carrying in excess of the prescribed amount of €10,000 or equivalent must declare that cash. Within Europe, all countries have adopted a declaration system in order to comply with Regulation (EC) No 1889/2005 of the European Parliament.

However, Jersey has adopted a disclosure system whereby there is an obligation to disclose the amount of “cash” being carried on importation or exportation but only when challenged by a Customs and Immigration Officer. This is at variance with many other jurisdictions, including Guernsey, who have adopted the declaration system.

The following statistics have been collated concerning voluntary cash disclosures that have been made at the ports, proactive cash searches carried out at the ports, and cash seizures made in line with the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008. A link to this law may be found at **Appendix III (item T)**.

The data supplied has been collated from the Service data base CLUE and is readily available as requested by MONEYVAL for 2010, 2011 and 2012.

#### Voluntary Cash Disclosures

As there is no requirement to declare cash carried in excess of the prescribed amount, the below statistics relate to voluntary disclosures made by the travelling public and comprise both inbound and outbound disclosures. This information is collected at the ports and then disclosed to the JFCU.

2010- 2

2011- 3

2012- 3

#### Cross Border Pro-active Outbound Cash Searches

Customs and Immigration Officers pro-actively challenge passengers travelling outbound at the ports in order to detect movements of cash across the border and apprehend cash couriers. When challenged, passengers are legally obliged to disclose to Officers any amounts of cash that they are carrying as per Article 37c of the Customs and Excise Law. A person who refuses to make a disclosure or makes an untrue disclosure (one false declaration detected in 2010) is guilty of an offence and is liable to imprisonment for 2 years and a fine.

Number of outbound, pro-active cross border cash searches made is detailed as follows:

2010- 114

2011- 163

2012- 134

#### Cross Border Pro-active Inbound Searches

Customs and Immigration Officers pro-actively challenge passengers travelling inbound (on a targeted or risk testing basis) in order to detect any revenue/prohibited/restricted goods being imported to the Island, including cash.

Number of combined inbound cross border cash searches made is detailed as follows:

2010- 2,034

2011- 2,474

2012- 1,941

#### Cash seizures made in accordance with the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008

2010 – 5,348<sup>23</sup> EUR assets seized, 10,862<sup>24</sup> EUR assets forfeited

2011 – 99,180<sup>25</sup> EUR assets seized, 48,941<sup>26</sup> EUR assets forfeited

2012 - 9,382 EUR assets seized, 9,382<sup>27</sup> EUR assets forfeited

Additionally, there were no criminal proceedings brought against any person in connection with or

<sup>23</sup> Cash returned to owner as deemed legitimate funds.

<sup>24</sup> Cash was forfeited in 2010 as a result of it being subject to cash seizure in 2009.

<sup>25</sup> £19,900 (€23,339) returned to owner as deemed legitimate funds

<sup>26</sup> €26,900 further forfeited in 2013

<sup>27</sup> £8,000 (€9,382) forfeited in 2013

resulting from the cash seizures made at the ports of Jersey.

6. R. 34: Which measures are 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?

Jersey trusts law comprises both the Trusts (Jersey) Law 1984, as amended (the “**Trusts Law**”) and Jersey customary law of trusts. A link to the Trusts Law may be found at **Appendix III (item AA.)**. The Trusts Law is not a codification or complete statement of the Jersey law of trusts, and this is expressly provided for at Article 1(2), where it states:

*“This Law shall not be construed as a codification of laws regarding trusts, trustees and persons interested under trusts.”*

Under both the customary law and the Trusts Law, one of the substantive requirements for the creation of a trust is certainty as to the identity of the beneficiaries of the trust. Accordingly, if a person cannot be identified by name or ascertained, then he or she cannot be a beneficiary of a Jersey trust. In addition, a trustee may commit a breach of trust if he makes a distribution to anyone that is not a beneficiary of the trust.

As well as these identification requirements, Article 21(5) of the Trusts Law imposes an express obligation on the trustee to keep accurate accounts and records of his or her trusteeship, including beneficial ownership information.

It is the view of the insular authorities that the effect of the combination of these provisions is that accurate, complete, and current beneficial ownership information should be known by and available from the trustee.

In addition, measures are in place pursuant to the Income Tax (Jersey) Law 1961 (as amended) (the “**Tax Law**”) whereby if the settlor or at least one beneficiary of the trust is resident in Jersey, the following information, as a minimum, will be collected by the Comptroller of Taxes:

- a) a copy of the trust instrument;
- b) the date the trust was created;
- c) the name and address of the trustee;
- d) the name and address of the settlor; and
- e) the name and address of each Jersey resident beneficiary and the extent of their interest.

A link to the Tax Law may be found at **Appendix III (item K.)**.

Article 16 of the Tax Law provides that the information submitted to the Comptroller of Taxes must be true, complete and accurate.

In respect of offences:

- Article 136 of the Tax Law provides a general offence in respect of a failure in the requirement to deliver information required under the Tax Law, including liability to a fine; and
- Article 137 of the Tax Law provides a general offence for negligently or fraudulently making incorrect statements, including liability to imprisonment and/or a fine.

The insular authorities are in the process of giving consideration to the advisability of amending both the Proceeds of Crime Law and the Money Laundering Order in order to put measures in place under the appropriate AML legislation so that trustees of all trusts are obliged to ensure that accurate, complete and current beneficial ownership information is retained and available.

It is the view of the insular authorities that the effect of customary law provisions is that accurate, complete and current beneficial ownership information should be known by and available from the trustee. Were the appropriate AML legislation to be amended to further enhance the position, an offence for non-compliance would also be introduced.



7. R.36&38: The MER describes Jersey's policy for granting MLA, including several situations where MLA requests may be refused. Please provide a breakdown of statistics for the period 2009-2013 on MLA requests sent and received, granted and refused (with details on grounds for refusal), related to ML cases, and other serious offences. Please provide also details on implementation of arrangements for coordinating seizure and confiscation actions with other countries, and subsequently asset sharing if applicable.

A breakdown of statistics on MLA requests follows:

Year	MLA received	MLA handled	Assistance granted	Assistance refused	Assistance ongoing	Saisie Judiciaire <sup>28</sup>	MLA sent
2009	85	107	64	1	42	3	15
2010	95	154	74	3	77	10	15
2011	64	98	78	2	18	14	21
2012	71	95	64	0	31	7	9
To 18/10/2013	52	76	40	1	35	10	15
Total	367	530	320	7	203	44	75

Assistance refused:

- 2009: Request from Bulgaria – Reason for refusal: Bulgarian authorities asked to provide undertaking and account details - no response.
- 2010: Request from Poland – Reason for refusal: Financial prejudice less than £100.
- 2010: Request from Belgium – Reason for refusal: Matrimonial matter.
- 2010: Request from Bulgaria - Reason for refusal: Insufficient information and no undertaking.
- 2011: Request from Portugal for service of documents, Reason for Refusal: Individual no longer resident in Jersey. Portuguese authorities notified.
- 2011: Request from UK to discharge restraint order, Reason for refusal: UK authorities advised not necessary.
- 2013: Request from Ireland - Reason for Refusal: Records held in Isle of Man. Irish authorities advised to re-direct Request to Isle of Man.

If a foreign jurisdiction obtains a confiscation order and assets are identified in Jersey it is possible to enforce that confiscation order against those assets (per the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008). A link to these Regulations may be found at **Appendix III (item U.)**. Assets are retained in Jersey unless there is an asset sharing agreement. Jersey looks sympathetically on any requests to share assets.

Asset sharing is dealt with by the Attorney General on a case by case basis. A recent example of asset sharing is the Bhojwani case (see question 2 above). Current cases being worked on include a request from Canada in connection with a historic drugs case and a request from Staffordshire (UK) Police in connection with a drugs importation.

The Attorney General is currently in the process of finalizing an Asset Sharing Agreement with a jurisdiction which requires an agreement in particular form before they are able to share certain assets. No statistics on asset sharing are available.

<sup>28</sup> Saisie Judiciaire - registration of confiscation order

**2.5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)<sup>29</sup>**

<b>Implementation/Application of the provisions in the Third Directive and the Implementation Directive</b>	
<p>Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.</p>	<p>Jersey is not obliged to transpose the Third Directive or Implementation Directive. However, specific provisions are applied in Jersey legislation as follows:</p> <p><b><u>Chapter I</u></b></p> <p><b>Article 1</b> – Money laundering and terrorist financing are criminalised by Articles 32 to 34 of the Proceeds of Crime Law, Articles 30, 37 and 38 of the Drug Trafficking Offences Law, and Articles 15 to 18 of the Terrorism Law.</p> <p><b>Articles 2.1, 3(1) 3(2) and 3(7)</b> – Schedule 2 of the Proceeds of Crime Law establishes the activities to which the Money Laundering Order applies. This Order prescribes measures to be taken by persons carrying on financial services business for the purposes of preventing and detecting money laundering and terrorist financing.</p> <p><b>Article 2.2</b> – Jersey legislation does not permit legal and natural persons who engage in a financial activity on an occasional or very limited basis to be excluded from the scope of the Money Laundering Order.</p> <p><b>Articles 3(3), (4), (5)</b> – Similar definitions may be found in Article 1(1) of the Proceeds of Crime Law, Article 1(1) of the Drug Trafficking Offences Law and Article 2 of the Terrorism Law.</p> <p><b>Article 3(6)</b> – See definition of beneficial owner below.</p> <p><b>Article 3(8), (9) and (10)</b> – Similar definitions may be found in Articles 1, 15(6) and 23A(4)(b) of the Money Laundering Order.</p> <p><b><u>Chapter II</u></b></p> <p><b>Article 6</b> – Anonymous accounts are prohibited in Jersey by Article 23B of the Money Laundering Order.</p> <p><b>Articles 7 to 10</b> – Provisions in relation to identification measures and on-going monitoring are covered in Articles 4, 13 and 14 of the Money Laundering Order. Article 13(4) of the Money Laundering Order is expressed as permitting verification of identity to be completed as soon as reasonably practicable after the establishment of a business relationship in the circumstances described in Article 9(2) of the Third Directive.</p> <p>Article 4 of the Money Laundering Order requires identification measures to be applied to a casino transaction of €3,000 or more.</p> <p><b>Articles 11 and 12</b> – Broadly equivalent provisions dealing with simplified identification measures may be found in Articles 17 and 18 of the Money Laundering Order, except that the scope of the concession for simplified measures in Jersey is limited to the performance of identification measures (and not also on-going monitoring) and there is no concession for simplified measures to be applied to electronic money.</p> <p><b>Article 13</b> – Article 15 of the Money Laundering Order requires enhanced CDD measures to be carried out in any situation which by its nature can present a higher risk of money laundering or terrorist financing, in any case where the customer has</p>

<sup>29</sup>

For relevant legal texts from the EU standards see Appendix II.

not been physically present, in the case of a correspondent banking relationship, and with respect to PEPs.

Article 23A of the Money Laundering Order places a prohibition on the use of shell banks and Article 11(3)(b) requires policies and procedures to be in place to prevent the use for money laundering or terrorist financing of products and transactions which are susceptible to anonymity.

**Article 14 to 19** – Broadly equivalent provisions dealing with reliance on third parties are set out in Article 16 of the Money Laundering Order.

### **Chapter III**

**Article 20** – Article 11(3) of the Money Laundering Order requires policies and procedures to be in place for the identification and scrutiny of:

- Complex or unusually large transactions;
- Unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
- Any other activity which the relevant person regards as particularly likely by its nature to be related to the risk of money laundering or terrorist financing.

**Articles 21 to 27** – The JFCU is composed of officers from the States of Jersey Police and the Jersey Customs and Immigration Service, supported by a team of civilian staff.

The JFCU is divided into 4 sections: the Intelligence Wing (the financial intelligence unit); the Operational Wing; the Drugs Trafficking Confiscation Wing; and the Administrative Wing.

The JFCU meets the criteria set out in Article 21 of the Third Directive.

Direct reporting obligations – which are in line with the Third Directive - are established in Article 34D of the Proceeds of Crime Law, Article 40A of the Drug Trafficking Offences Law, Article 23 of the Terrorism Law and Article 21(2) to (4) of the Money Laundering Order. No provision is made for reports to be submitted to a self-regulatory body.

Separate provisions in Articles 32 and 33 of the Proceeds of Crime Law, Articles 37 and 38 of the Drug Trafficking Offences Law and Article 22 of the Terrorism Law deal with the timing of reports (before and after knowledge or suspicion is formed). Where a report is made before a person does the act concerned, an offence will not be committed where the act is subsequently done with the consent of the JFCU.

In addition, Article 23 of the Money Laundering Order places a duty on the Commission (and any other supervisors that may be designated in future) to report to the JFCU facts discovered in the course of inspections (and in other circumstances).

**Articles 28 and 29** – “Tipping off” provisions may be found in Article 35 of the Proceeds of Crime Law, Article 41 of the Drug Trafficking Offences Law and Article 35 of the Terrorism Law.

### **Chapter IV**

**Article 30** - Articles 19 and 20 of the Money Laundering Order require certain records to be kept for prescribed periods. Provisions are equivalent to those in the Third Directive.

**Article 31** – Article 10A applies to financial services business carried on outside Jersey and includes provisions that are equivalent to those in the Third Directive.

**Article 32** – Article 11(1) requires a relevant person to maintain appropriate policies and procedures relating to CDD measures and record-keeping procedures. This will allow full and rapid responses to information circulated by the JFCU concerning the

maintenance of business relationships with specified persons.

**Article 33** – The JFCU maintains comprehensive statistics in line with those envisaged in the Third Directive.

#### **Chapter V**

**Article 34** – Article 11(1) requires appropriate policies and procedures to be maintained in line with those in the Third Directive. In addition, Article 11(8) requires a relevant person with any subsidiary or branch that carries on a financial services business to communicate to that subsidiary or branch its policies and procedures.

**Article 35** – Article 11(9) of the Money Laundering Order requires a relevant person to take appropriate measures for the purposes of making employees aware of enactments in Jersey relating to money laundering and terrorist financing. Article 11(1) provides that a relevant person must provide employees with training in the recognition and handling of transactions carried out by, and the conduct of, suspected money launderers. This will include provision of information on current money laundering techniques, methods and trends.

The JFCU ensures that, wherever practicable, timely feedback is provided on reports.

**Article 36** – Currency exchange offices, money transmission and remittance offices, and trust and company services providers must be licenced by the Commission under Article 9 of the Financial Services Law. A person operating a casino must be registered under Article 14 of the Supervisory Bodies Law as well as under Article 14 of the Gambling (Jersey) Law 2012. A link to this law may be found at **Appendix III (item J.)**.

Under each of the above laws, licensing and registration will be refused if the relevant supervisor is not satisfied with the fitness and properness of the owners and controllers of an applicant.

**Article 37** – The Commission is charged with monitoring compliance by relevant persons with AML/CFT requirements. It does so under Article 8 of the Supervisory Bodies Law which gives the Commission a power to conduct reasonable routine examinations. Article 30 of this law also gives the Commission a power to compel the production of any information that is relevant to monitoring compliance and to perform checks.

No provision is made for the involvement of self-regulatory bodies.

**Article 38** – not applicable

**Article 39** – Natural and legal persons can be held liable for offences committed under the Proceeds of Crime Law (including the Money Laundering Order), Drug Trafficking Offences Law, Terrorism Law, and Supervisory Bodies Law. Penalties are considered to be effective, proportionate and dissuasive.

Administrative measures may be applied under the Supervisory Bodies Law, Financial Services Law and other regulatory laws administered by the Commission. Such measures are considered to be effective, proportionate and dissuasive.

Specific provisions of the Implementing Directive are applied in Jersey legislation as follows.

**Article 2** – A definition of a PEP is included in Article 15(6) of the Money Laundering Order. See below for further details on PEPs.

**Article 3** – Article 18 of the Money Laundering Order provides for simplified identification measures to be applied in three cases not envisaged by the Third Directive:

	<p>First, where the customer of a relevant person is: (i) a person wholly owned by a person who is subject to prudential, conduct of business and AML/CFT supervision by the Commission, or is subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendation and is overseen for compliance with those requirements; and (ii) fulfils the following conditions:</p> <ul style="list-style-type: none"> <li>• The person is incorporated or registered, as the case may be, in the same jurisdiction as the parent;</li> <li>• The person has no customers who are not customers of the parent;</li> <li>• The person’s activity is ancillary to the regulated business or equivalent business carried on by the parent; and</li> <li>• In relation to that activity, the person maintains the same policies and procedures as the parent.</li> </ul> <p>The extent of the concession that may be applied to the wholly owned person is described in Article 18(7) of the Money Laundering Order.</p> <p>Second, where a person is authorized to act on behalf of a customer, the customer is not a relevant person, 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 the financial services business is either subject to prudential, conduct of business and AML/CFT supervision by the Commission or is subject to requirements to forestall and prevent money laundering that are consistent with those in the FATF Recommendation and is overseen for compliance with those requirements. The extent of the concession that may be applied to the authorized person is described in Article 18(8) of the Money Laundering Order.</p> <p>Third, where a relevant person is a lawyer or estate agent 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 Control of Housing and Work (Jersey) Law 2012. A link to this law may be found at <b>Appendix III (item E.)</b>. The extent of the concession that may be applied to the customer is described in Article 18(8A) of the Money Laundering Order.</p> <p><b>Article 4</b> – Schedule 2 of the Proceeds of Crime Law list types of business that are considered to be “financial services business”. This includes activities that are defined as regulated activities under the Collective Investment Funds Law, Banking Business Law, Insurance Business Law and Financial Services Law, except where otherwise explained in Schedule E to the AML/CFT Handbook (which lists circumstances when an activity is not to be considered as financial services business. There is no provision in Jersey legislation for legal or natural persons who engage in a financial activity on an occasional or very limited basis to be excluded from the scope of Schedule 2 of the Proceeds of Crime Law.</p>
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<b>Beneficial Owner</b>	
Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in	<p>Article 2 of the Money Laundering Order states that each of the following individuals is a beneficial owner or controller of a person (“other person”) where that other person is a legal person:</p> <ul style="list-style-type: none"> <li>• An individual who is an ultimate beneficial owner of that other person; and</li> <li>• An individual who ultimately controls or otherwise exercises control over the management of that other person.</li> </ul>

<p>the 3rd Directive<sup>30</sup> (please also provide the legal text with your reply)</p>	<p>It does not matter whether an individual's ultimate ownership or control is direct or indirect.</p> <p>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 of the other person being involved in money laundering or terrorist financing.</p> <p>Paragraph 90 of Section 4.5.1 and paragraph 118 of Section 4.5.5 of the AML/CFT Handbook explain that, for lower risk relationships, individuals with a holding of 25% or more of the capital of the legal person will be considered to be a beneficial owner.</p> <p>Paragraph 103 of Section 4.5.3 of the AML/CFT Handbook explains that the following will be considered to be a beneficial owner or controller of legal person that is a foundation: each council member; each founder; the guardian, each beneficiary entitled to benefit; and each beneficiary or person in whose favour the council may exercise discretion that has been identified as presenting a higher risk.</p> <p>Separately, Article 3(2) of the Money Laundering Order provides for measures for determining whether a customer is acting for a third party, and, if so, identifying that third party and:</p> <ul style="list-style-type: none"> <li>• Where the third party is a legal person, identifying each individual who is that third party's beneficial owner or controller (in line with Article 2).</li> <li>• Where the third party is a trust, identifying the settlor and protector and, having regard to the risk of that person being involved in money laundering or terrorist financing, any person who has a beneficial interest in the trust or who is the object of a trust power.</li> <li>• Where the third party is a legal arrangement other than a trust, having regard to the risk of that person being involved in money laundering or terrorist financing, identifying any person who has a beneficial interest in the legal arrangement.</li> </ul> <p>The effect of the above corresponds to the definition of beneficial ownership in the Third Directive.</p>
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<b>Risk-Based Approach</b>	
<p>Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.</p>	<p>Financial institutions are permitted and, indeed, required to apply a risk-based approach when discharging certain of their AML/CFT obligations.</p> <p>Article 11(1) of the Money Laundering Order requires a relevant person to maintain appropriate policies and procedures relating to:</p> <ul style="list-style-type: none"> <li>• CDD measures</li> <li>• Reporting</li> <li>• Record-keeping</li> <li>• Screening of employees</li> <li>• Internal control</li> <li>• Risk assessment and management</li> <li>• The monitoring and management of compliance with, and the internal communication of, such policies and procedures.</li> </ul> <p>Article 11(2) says that "appropriate policies and procedures" means those that are appropriate having regard to the degree of risk of money laundering or terrorist</p>

<sup>30</sup>

Please see Article 3(6) of the 3<sup>rd</sup> Directive reproduced in Appendix II.

financing taking into account the type of customers, business relationships, products or transactions with which the relevant person's business is concerned.

By virtue of paragraph 10 of Section 2.3 of the AML/CFT Handbook, the risk of money laundering or terrorist financing must be determined by a relevant person's board through a business risk assessment, which must be recorded and kept up to date. This risk assessment must also form the basis for adoption of a formal strategy to counter money laundering and terrorist financing and, in addition to policies and procedures, provide the basis for putting in place adequate systems and controls.

Section 1.6 of the AML/CFT Handbook explains why a risk based approach is adopted. It is said that such an approach:

- Recognises that the money laundering and financing of terrorism threat to a relevant person varies across customers, jurisdictions, products and delivery channels;
- Allows a relevant person to differentiate between customers in a way that matches risk in a particular business;
- While establishing minimum standards, allows a relevant person to apply its own approach to systems and controls, and arrangements in particular circumstances; and
- Helps to produce a more cost effective system.

Section 2.3.1 of the AML/CFT Handbook says that the Board of a relevant person may demonstrate that it has considered the business' exposure to money laundering and financing of terrorism risk by:

- Involving all members of the Board in determining the risks posed by money laundering and financing of terrorism within those areas for which they have responsibility.
- Considering organizational factors that may increase the level of exposure to the risk of money laundering and financing of terrorism, e.g. outsourced aspects of regulated activities or compliance functions.
- Considering the nature, scale and complexity of its business, the diversity of its operations (including geographical diversity), the volume and size of its transactions, and the degree of risk associated with each area of its operation.
- Considering who its customers are and what they do.
- Considering whether any additional risks are posed by the jurisdictions with which its customers are connected. Factors such as high levels of organised crime, increased vulnerabilities to corruption and inadequate frameworks to prevent and detect money laundering and the financing of terrorism will impact the risk posed by relationships connected with such jurisdictions.
- Considering the characteristics of the products and services that it offers and assessing the associated vulnerabilities posed by each product and service, including delivery channels.
- Considering how it establishes and delivers products and services to its customers. For example, risks are likely to be greater where relationships may be established remotely (non-face to face), or may be controlled remotely by the customer (straight-through processing of transactions).

Articles 2 and 3 of the Money Laundering Order provides for identification measures to be applied on the basis of a risk-based approach. In particular:

- Articles 2(4) provides that, in determining whether an individual is a beneficial owner or controller of another person, regard must be had to the risk of that individual or other person being involved in money laundering or terrorist

	<p>financing.</p> <ul style="list-style-type: none"> <li>• Article 3(5) provides that identification measures must include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve money laundering or terrorist financing, including obtaining appropriate information for assessing that risk. Section 3.3.4.1 of the AML/CFT Handbook sets out the factors to be taken into account when assessing risk.</li> <li>• Article 3(3) defines on-going monitoring to mean 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).</li> <li>• Article 3(7) provides that, in determining whether a person holds a beneficial interest in a legal arrangement or is the object of a trust power, regard should be had to the risk of money laundering or terrorist financing.</li> </ul> <p>Where a relevant person determines in accordance with Article 3(5) that a relationship presents a lower risk of money laundering or terrorist financing, then it may apply simplified identification measures in line with Sections 4.3 to 4.5.7 of the AML/CFT Handbook. Conversely, in line with Article 15 of the Money Laundering Order, a relevant person must apply enhanced CDD measures in certain prescribed circumstances and, in addition, in any situation which by its nature can present a higher risk of money laundering or terrorist financing.</p> <p>In addition, Article 18 of the Money Laundering Order also prescribes certain lower risk circumstances when identification measures may not be not required.</p>
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<b>Politically Exposed Persons</b>	
<p>Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive<sup>31</sup> are provided for in your domestic legislation (please also provide the legal text with your reply).</p>	<p>Whereas Article 13(4) of the Third Directive requires institutions and persons to have appropriate risk-based procedures to determine whether a customer is a PEP, Article 11(3)(c) of the Money Laundering Order provides that a relevant person must maintain appropriate policies and procedures for determining whether any of the following is a PEP:</p> <ul style="list-style-type: none"> <li>• A customer;</li> <li>• A beneficial owner or controller of a customer;</li> <li>• A third party for whom a customer is acting;</li> <li>• A beneficial owner or controller of a third party for whom a customer is acting; or</li> <li>• A person acting, or purporting to act, on behalf of a customer.</li> </ul> <p>The term PEP is defined in Article 15(6) of the Money Laundering Order to cover:</p> <ul style="list-style-type: none"> <li>• 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 – <ul style="list-style-type: none"> <li>o heads of state, heads of government, senior politicians,</li> <li>o senior government, judicial or military officials,</li> <li>o senior executives of state owned corporations,</li> </ul> </li> </ul>

<sup>31</sup> Please see Article 3(8) of the 3<sup>rd</sup> Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.



	<ul style="list-style-type: none"> <li>o important political party officials;</li> <li>• An immediate family member of a person mentioned above, including any of the following – <ul style="list-style-type: none"> <li>o a spouse,</li> <li>o a partner, that is someone considered by his or her national law as equivalent or broadly equivalent to a spouse,</li> <li>o children and their spouses or partners,</li> <li>o parents,</li> <li>o grandparents and grandchildren,</li> <li>o siblings;</li> </ul> </li> <li>• Close associates of a person mentioned above, 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.</li> </ul> <p>Article 2(4) of the Implementation Directive states that an institution or person shall not be obliged to consider a person who has ceased to be entrusted with a prominent public function for a period of least one year as politically exposed. There is no similar provision in the Money Laundering Order.</p> <p>Provisions are considered to be in accordance with the Third Directive and Implementation Directive.</p>
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<b>“Tipping off”</b>	
<p>Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.</p>	<p>The provision also covers on-going ML or TF investigations – see Article 35(1) of the Proceeds of Crime Law, Article 35(1) of Terrorism Law and Article 41(1) of Drug Trafficking Offences Law.</p>
<p>With respect to the prohibition of “tipping off” please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.</p>	<p>The Proceeds of Crime Law provides that it is not an offence for a professional legal adviser to disclose information in certain circumstances (Articles 35(4) and (5)), that it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial to an investigation (Article 35(6)) and that no person shall be guilty of an offence 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 Proceeds of Crime Law or of any other enactment relating to an offence (not being a drug trafficking offence) in Jersey for which a person is liable on conviction to imprisonment for a term of one or more years (Article 35(8)).</p> <p>The Terrorism Law provides that that it is a defence to prove that a person did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorism investigation or that he or she had a reasonable excuse for the disclosure or interference (Article 35(5)) and it is not an offence for a professional legal adviser to disclose information in certain circumstances (Article 35(6)).</p> <p>The Drug Trafficking Offences Law provides that it is not an offence for a professional legal adviser to disclose information in certain circumstances (Articles 35(4) and (5)), that it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial to an investigation (Article 35(6)) and that no person shall be guilty of an offence 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 Drug Trafficking Offences Law or of any other enactment relating to drug trafficking or the proceeds of such trafficking (Article 35(8)).</p> <p>The draft Proceeds of Crime and Terrorism Law replaces the above exceptions and provides that:</p> <ul style="list-style-type: none"> <li>• Regulations may be made setting out circumstances in which it shall not be an offence to disclose information (such as, for example, sharing information intra-group or with the Commission).</li> <li>• It shall not be an offence where a disclosure is made by a professional legal adviser (i) to a client or to the client’s representative in connection with the provision of legal advice to the client or (ii) to any person for the purpose of actual or contemplated legal proceedings; and the disclosure is not in either case made with a view to furthering a criminal purpose.</li> <li>• A person shall not be guilty of an offence 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 the Proceeds of Crime Law (which will be extended to include the Drug Trafficking Offences Law provisions in this regard) or Terrorism Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct or of any other enactment relating to terrorism or the investigation of terrorism.</li> </ul>

**“Corporate liability”**

Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.

*Criminal Liability*

In general, a corporation is in the same position in relation to criminal liability as a natural person and, subject to limited exceptions<sup>32</sup>, may be convicted of criminal offences. For offences requiring *mens rea*, the requisite knowledge or intent must be attributed to the corporation. The classic test of attribution of actions or knowledge in relation to companies has been to ask who is the “directing mind and will” of the company<sup>33</sup>, otherwise known as the identification principle, so that a corporation may be held liable for an offence committed in the course of the corporation’s business by a person in control of its affairs to such a degree that his mind and will are regarded in law as the mind and will of the corporation.

Whether persons are the “directing mind and will” of a corporation is a question of fact depending on all the circumstances. It is expected that the Jersey courts would also apply the principle laid down by the Privy Council in *Meridian, Global Funds Management Asia Ltd v Securities Commission*<sup>34</sup> that some statutory offences are intended to apply to companies so that insistence on the primary rules of attribution would defeat that intention. In those circumstances whether an act is to be attributed to the corporation is a question of construing the statute and its underlying policy considerations. On this basis, a statute may in certain circumstances impose corporate criminal liability in respect of the acts of an employee who could not be said to be the ‘directing mind and will’ of the corporation under its constitution.

Corporate criminal liability does not prejudice the criminal liability of the individuals concerned<sup>35</sup> nor the imposition of civil or administrative sanctions on the corporation.

*Civil Sanctions*

Under Article 24(1) of the Supervisory Bodies Law, on the application of a designated supervisory body, the Royal Court may issue an injunction restraining a relevant person from committing (or continuing or repeating) a contravention of:

- Article 10 of that Law (prohibiting unauthorized specified business);
- any condition placed on registration;
- any direction given; or
- the Money Laundering Order.

Article 24(2) of the Supervisory Bodies Law allows the Court to make an order requiring steps to be taken to remedy a contravention.

Under Article 25 of the Supervisory Bodies Law, on the application of a designated supervisory body, the Royal Court may make an order making a relevant person subject to such supervision, restraint or conditions as the Court may specify if it considers that: the relevant person is not fit and proper (where it is required to be so); where it is likely that a relevant person will commit a contravention under Article 24(1); or it is desirable for the protection of persons who have, or may,

<sup>32</sup> Offences for which imprisonment is the only penalty e.g. murder, and those which by their nature can only be committed by natural persons e.g. assault.

<sup>33</sup> See *Federal Republic of Brazil v Durant International* 2012 (2) JLR 356 paras 45-54

<sup>34</sup> [1995] 2 AC 500 (PC), cited in *Federal Republic of Brazil v Durant International* 2012 (2) JLR 356, and applied in England and Wales – see, for example, *R v St. Regis Paper Co Ltd* [2011] EWCA Crim 2527

<sup>35</sup> See *AG v Caversham & Bell* [2005] JRC 165, where both the corporate body and an individual director were convicted.

transact supervised business with the relevant person.

Administrative Sanctions

Under Article 11(1) of the Supervisory Bodies Law, a relevant person who intends to carry on a specified financial services business (specified in the Schedule to the Supervisory Bodies Law) must register under Articles 13 or 15 of the Supervisory Bodies Law (“**type A**”), except where that person is a prudentially supervised person – under the regulatory laws – (“**type B**”) in which case it is required only to notify the Commission of the specified activity that it intends to carry on. This is because its fitness and properness will have been considered by the Commission under the regulatory laws. A prudentially supervised person that does not also carry on a specified financial services business (“**type C**”) is not required to take any action under the Supervisory Bodies Law, since its fitness and properness will have been considered by the Commission under the regulatory laws and it will be registered thereunder.

In the case of a relevant person that is type A and holds a Level 1 registration, a designated supervisory body is able to revoke a registered person’s licence under Article 18 of the Supervisory Bodies Law – where a relevant person, a principal person in relation to the relevant person, or a key person in relation to the relevant person is not a fit and proper person or where there has been failure to follow a Code of Practice. Similar provisions apply under Article 14(3) – where an applicant is applying for Level 1 registration (specified in the Schedule to the Supervisory Bodies Law). In the case of a relevant person that is type A and holds a Level 2 registration, a designated supervisory body is able to revoke a registered person’s licence under Article 18 of the Supervisory Bodies Law where there has been failure to follow a Code of Practice.

In the case of a relevant person that is type A or type B, a designated supervisory body is able to set conditions on a licence under Article 17(3) (a deemed licence in the case of type B) – and is required to give the relevant person its reasons for doing so (which are not limited by law).

In the case of all relevant persons, a designated supervisory body is able to issue directions (Article 23) and to issue public statements that warn the public and/or censure a relevant person (Article 26). Article 23 provides for a direction to be issued, *inter alia*, where a person had failed to comply with any requirement of the Supervisory Bodies Law, any requirement of the Money Laundering Order, or any Code of Practice that applies to a relevant person, and where it is desirable to do so to protect Jersey’s interests. Article 26 provides, *inter alia*, for a public statement to be issued where it is in the best interests of the public to do so and where it appears that a relevant person has committed a contravention of:

- Article 10 of the Supervisory Bodies Law (unauthorized business);
- any condition placed on registration;
- any direction given;
- any Code of Practice that applies to a person; or
- the Money Laundering Order.

These tools and powers mirror those that are also available to the Commission under the regulatory laws – that apply to relevant persons that are type B and type C – except that, in addition, the Commission may object to the continued appointment of a principal or key person under the regulatory laws, and the Royal Court (or the Commission in the case of a relevant person that is a bank) has a power to appoint a manager to manage a prudentially supervised person.

	Parliamentary approval is to be sought, in the near future, for the Supervisory Bodies Law and the regulatory laws to be amended to provide the Commission with the power to apply administrative financial penalties to type A, B and C relevant persons that breach a Code of Practice that applies to them.
Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person.	<p><u>Criminal Liability</u> Corporate criminal liability may be applied in these circumstances for offences not requiring <i>mens rea</i>. For offences requiring <i>mens rea</i>, the position does not appear to have been tested before the Jersey courts, although it is expected that, in the case of statutory offences, in determining whether the requisite knowledge or intent is to be attributed to the corporation, the Jersey courts will construe the relevant statute and its underlying policy considerations, in accordance with the principle in <i>Meridian, Global Funds Management Asia Ltd v Securities Commission</i><sup>36</sup>.</p> <p><u>Civil Sanctions</u> See above.</p> <p><u>Administrative Sanctions</u> See above.</p>

<b>DNFBPs</b>	
Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over.	<p>Article 37(1) of the Proceeds of Crime Law provides for the Chief Minister to prescribe measures to be taken by persons who carry on financial services business for the purposes of preventing and detecting money laundering and terrorist financing (through the Money Laundering Order).</p> <p>Article 36 of the Proceeds of Crime Law provides that “financial services business” means a business described in Schedule 2.</p> <p>Paragraph 4 of Part B of Schedule 2 of the Proceeds of Crime Law describes services provided by high value dealers.</p> <p>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 (or equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.</p> <p>Cash means notes, coins, travellers’ cheques, cheques and bearer negotiable instruments.</p>

<sup>36</sup> [1995] 2 AC 500 (PC), cited in *Federal Republic of Brazil v Durant International* 2012 (2) JLR 356, and applied in England and Wales – see for example *R v St. Regis Paper Co Ltd* [2011] EWCA Crim 2527

## 2.6. Statistics

a. Please complete - to the fullest extent possible - the following tables:

2009												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	1	1 <sup>37</sup>	1	1	0	0	0	0	0	0	0	0
FT	0	0	0	0	0	0	0	0	0	0	0	0

2010												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	1	1 <sup>38</sup>	2	2	2	2 <sup>39</sup>	0	0	1	0	1	7,671,685.70 <sup>40</sup>
FT	0	0	0	0	0	0	0	0	0	0	0	0

2011												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	1	4 <sup>41</sup>	0	0	0	0	0	0	0	0	1	21,915,965.32 <sup>42</sup>
FT	0	0	0	0	0	0	0	0	0	0	0	0

2012												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	1	4 <sup>43</sup>	0	0	0	0	0	0	0	0	0	0
FT	0	0	0	0	0	0	0	0	0	0	0	0

As at 01.11.2013												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)

<sup>37</sup> Bhojwani investigation ongoing from 2001. Prosecution proceedings began in 2008

<sup>38</sup> Bhojwani ongoing

<sup>39</sup> Bhojwani conviction and Michel, P conviction

<sup>40</sup> Michel: £6,528,707 confiscated. Euro conversion rate as at 23 October 2013

<sup>41</sup> Single investigation covering Mcfeat et al and Ellis

<sup>42</sup> Bhojwani: £2,199,507.20 and \$26,559,560.33 confiscated. Euro conversion rate as at 23 October 2013

<sup>43</sup> ibid

<b>ML</b>	2 <sup>44</sup>	5	3 <sup>45</sup>	5	3	5	0	0	0	0	1	3,584.88 <sup>46</sup>
<b>FT</b>	0	0	0	0	0	0	0	0	0	0	0	0

## b. STR/CTR

### Explanatory note:

*Reports about transactions above threshold:* Jersey does not operate a threshold-based reporting system. Reports are made on the basis of knowing or suspecting, or having reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or terrorist financing.

*Cases opened by FIU:* The JFCU carries out a manual initial analysis of all disclosures. There is no automatic IT-based analysis.

*Notifications to law enforcement/ prosecutors:* Where a SAR is received by the JFCU, it can be disseminated to another agency more than once; therefore the total number of notifications does not provide a meaningful or useful statistic. Whilst the JFCU is able to identify every agency with which intelligence is shared, domestically and abroad, it is not readily able to provide the number of underlying SARs that have been disseminated.

N/A – means not applicable. N/Av – means not available

2009															
Statistical Information on reports received by the FIU								Judicial proceedings							
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious activity		Cases opened by FIU		notifications to law enforcement/prosecutors		Indictments				Convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
Commercial Banks	N/A	1289	7	100%	100%	N/av	N/av	0	0	0	0	0	0	0	0
Insurance Companies	N/A	11	0												
Notaries	N/A	N/A	N/A												
Currency Exchange	N/A	48	0												
Broker Companies	N/A	2	0												
Securities' Registrars	N/A	N/A	N/A												

<sup>44</sup> Mcfeat et al and Ellis, and re-opening of the financial investigation relating to Figueira (started in 2005-6), following her return to the Island and arrest in June 2013.

<sup>45</sup> Mcfeat et al and Ellis brought as separate prosecutions, and the prosecution of Figueira.

<sup>46</sup> Mcfeat et al: £3,051 confiscated. Euro conversion rate as at 23 October 2013.

NB Ellis not yet sentenced but nominal amount of assets available and confiscation order unlikely to be sought.

Lawyers	N/A	34	0															
Accountants/Auditors	N/A	8	0															
Company Service Providers	N/A	340	5															
Others (please specify and if necessary add further rows)	N/A	11	0															
Regulator	N/A	29	0															
Financial Advisors	N/A	20	0															
Funds	N/A	16	0															
Investment	N/A	25	0															
Non FSB	N/A	8	0															
<b>Total</b>		<b>1841</b>	<b>12</b>															



2010																			
Statistical Information on reports received by the FIU								Judicial proceedings											
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious activity		Cases opened by FIU		notifications to law enforcement/prosec utors		Indictments				Convictions							
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT					
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons				
Commercial Banks	N/A	1184	5																
Insurance Companies	N/A	10	0																
Notaries	N/A	N/A	N/A																
Currency Exchange	N/A	38	0																
Broker Companies	N/A	1	0																
Securities' Registrars	N/A	N/A	N/A																
Lawyers	N/A	36	0																
Accountants/Auditors	N/A	19	1																
Company Service Providers	N/A	333	1	100%	100%	N/av	N/av	1 <sup>47</sup>	1	0	0	2 <sup>48</sup>	2	0	0				
Others (please specify and if necessary add further rows)	N/A	9	0																
Regulator	N/A	47	0																
Financial Advisors	N/A	17	0																
Funds	N/A	20	0																
Investment	N/A	23	0																
Non FSB	N/A	2	0																
<b>Total</b>		<b>1739</b>	<b>7</b>																

<sup>47</sup> P. Michel (fresh indictment laid following order of a re-trial).

<sup>48</sup> Bhojwani conviction (indictment laid 2008) and P. Michel conviction

2011											
Statistical Information on reports received by the FIU								Judicial proceedings			
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious activity		Cases opened by FIU		notifications to law enforcement/prosec utors		Indictments		Convictions	
		ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
Commercial Banks	N/A	1179	5	100%	100%	2,028	0	0	0	0	0
Insurance Companies	N/A	6	0								
Notaries	N/A	N/A	N/A								
Currency Exchange	N/A	53	1								
Broker Companies	N/A	3	0								
Securities' Registrars	N/A	N/A	N/A								
Lawyers	N/A	41	0								
Accountants/Aud itors	N/A	21	0								
Company Service Providers	N/A	362	5								
Others (please specify and if necessary add further rows)	N/A	6	0								
Regulator	N/A	46	2								
Financial Advisors	N/A	31	0								
Funds	N/A	39	0								
Investment	N/A	45	0								
Non FSB	N/A	2	0								
<b>Total</b>		<b>1834</b>	<b>13</b>								

2012													
Statistical Information on reports received by the FIU								Judicial proceedings					
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious activity		Cases opened by FIU		notifications to law enforcement/prose cutors		Indictments				Convictions	
		ML	FT	ML	FT	ML	FT	ML		FT			
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons		
Commercial Banks	N/A	1025	6	100%	100%	1,821	0	0	0	0	0	0	0
Insurance Companies	N/A	5	0										
Notaries	N/A	N/A	N/A										
Currency Exchange	N/A	26	0										
Broker Companies	N/A	2	0										
Securities' Registrars	N/A	N/A	N/A										
Lawyers	N/A	31	0										
Accountants/Aud itors	N/A	27	0										
Company Service Providers	N/A	468	5										
Others (please specify and if necessary add further rows)	N/A	8	0										
Regulator	N/A	64	1										
Financial Advisors	N/A	21	0										
Funds	N/A	22	1										
Investment	N/A	31	1										
Non FSB	N/A	5	0										
<b>Total</b>		<b>1735</b>	<b>14</b>										

2013 (1 <sup>st</sup> January – 30 <sup>th</sup> September)											
Statistical Information on reports received by the FIU								Judicial proceedings			
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious activity		Cases opened by FIU		notifications to law enforcement/ prosecutors		Indictments		Convictions	
		ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
Commercial Banks	N/A	937	5								
Insurance Companies	N/A	4	0								
Notaries	N/A	N/A	N/A								
Currency Exchange	N/A	29	0								
Broker Companies	N/A	2	0								
Securities' Registrars	N/A	N/A	N/A								
Lawyers	N/A	28	0								
Accountants/ Auditors	N/A	15	0	100 %	100 %	1,180		0	0	0	0
Company Service Providers	N/A	292	1								
Others (please specify and if necessary add further rows)	N/A	3	0								
Regulator	N/A	47	2								
Financial Advisors	N/A	22	0								
Funds	N/A	30	2								
Investment	N/A	27	0								
Non FSB	N/A	2	0								
<b>Total</b>		<b>1438</b>	<b>10</b>								

**c) AML/CFT sanctions imposed by supervisory authorities.**

Please complete a table (as beneath) for administrative sanctions imposed for AML/CFT infringements in respect of each type of the supervised entity in the financial sector (eg, banks, insurance, securities etc).

If similar information is available in respect of supervised DNFBP, please provide an additional table (or tables), also with information as to the types of AML/CFT infringements for which sanctions were imposed.

Please adapt the tables, as necessary, also to indicate any criminal sanctions imposed on the initiative of supervisory authorities and for what types of infringement.

	2009	2010	2011	2012	09/2013
<b>Number of AML/CFT violations identified by the supervisor</b>					
Fund Services Business (FSB)	9	28	29	13	17
Trust Company Business (TCB)	207	186	135	112	155
DNFBPs	31	53	86	41	17
Banking Business (BB)	21	31	20	10	16
General Insurance Mediation Business (GIMBs)	0	0	1	0	0
Insurance	2	1	1	2	2
Investment Business (IB)	24	26	15	13	25
<b>Total number of AML/CTF violations</b>	<b>294</b>	<b>325</b>	<b>287</b>	<b>191</b>	<b>232</b>
<b>Type of measure/sanction*</b>					
A) Written warnings	10	11	2	3	0
B) Directions	14	17	29	25	34
C) Banning direction	4	8	7	6	1
D) Withdrawal of licence/negotiated closure	1	1	2	2	1
E) Cases referred to the JFCU	3	0	6	4	1

	2009	2010	2011	2012	09/2013
<b>Total amount of fines</b>	N/A	N/A	N/A	N/A	N/A
<b>Number of sanctions taken to the court (where applicable)</b>	N/A	N/A	N/A	N/A	N/A
Number of final court orders	N/A	N/A	N/A	N/A	N/A
Average time for finalising a court order	N/A	N/A	N/A	N/A	N/A

\* Please amend the types of sanction as necessary to cover sanctions available within your jurisdiction

\*\* Please specify

**Explanatory note:**

A) Written warnings are letters issued under the relevant provision of the Financial Services Law by the Commission to an individual which detail findings including on AML/CFT in respect of the individual's integrity and competence and advise that the issues will remain on the individual's regulatory record and will be taken into account in the event that the individual applies for principal person or key person status in the future.

B) Directions issued under Article 23 of the Financial Services Law requiring a person (for example, owner, controller, individual or registered person) to take or refrain from taking certain action. Similar provisions providing for directions to be issued are contained in Article 21 of the Banking Business (Jersey) Law 1991 and Article 13 of the Collective Investment Funds (Jersey) Law 1988. Failure to comply with any of the provisions of a direction given under these Articles is an offence and liable to imprisonment for a term of 2 years and to a fine.

C) Banning direction – issued in accordance with applicable provisions of regulatory laws (e.g. Article 23 of the Financial Services Law). These banning directions require that any employee of a registered person be removed, or removed and replaced by another person acceptable to the Commission, or excluded from working in the regulated financial services sector.

D) Withdrawal of licence/negotiated closure – failings in business/individual's competency and integrity, failings in assessing and subsequent management of risk when placing reliance on intermediaries or introducers, failings in taking appropriate measures to find out the nature and source of funds. Each case is treated separately with an overriding aim to reach a voluntary agreement. Should the process of a voluntary negotiated closure fail, the Commission exerts its power to withdraw (revoke) a licence (e.g. under Article 9(4) of the Financial Services Law).

F) Cases referred to the JFCU – these cases involve the disclosure of information with a view to the investigation of a suspected offence or institution of, or otherwise for the purposes of any criminal proceedings, e.g. in accordance with Article 38(1)(e) of the Financial Services Law.

### 3. Appendices

#### 3.1. Appendix I - Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
<b>2. Legal System and Related Institutional Measures</b>	
2.1 Criminalization of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> <li>• Amend Articles 34 of the POCL and 30 of the DTOL to:               <ul style="list-style-type: none"> <li>o 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;</li> <li>o to eliminate the purpose requirement for the acts of converting and transferring proceeds of crime.</li> </ul> </li> <li>• The defence (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.</li> <li>• Amend Article 18 of the TL to cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions.</li> <li>• 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.</li> <li>• 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.</li> </ul>
2.2 Criminalization of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> <li>• Amend Article 2 of the TL to include a reference to international organisations.</li> <li>• 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.</li> </ul>
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Consideration should be given to providing for restraint of property and or its equivalent or corresponding value from the beginning of an investigation;</li> <li>• In the case of matters arising under the TL, there should be provision for the restraint and confiscation of property of corresponding value.</li> <li>• A more direct legal basis should be provided for the current 221</li> </ul>

	‘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"> <li>• 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.</li> <li>• 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.</li> <li>• The authorities should develop procedures to assess the effectiveness of their program to implement the UNSCRs and keep statistics regarding implementation.</li> </ul>
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> <li>• The Intelligence Wing of the JFCU should be adequately staffed to perform its functions effectively.</li> <li>• The JFCU should issue periodic reports including statistics, typologies and trends and information on its activities.</li> <li>• 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.</li> </ul>
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> <li>• The authorities should implement steps to improve effectiveness by seeking to increase investigative resources.</li> <li>• Competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT.</li> </ul>
2.7 Cross-Border Declaration & Disclosure (SR IX)	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
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"> <li>• 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.</li> <li>• 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.</li> <li>• The authorities should review the permitted exemptions from CDD measures in Article 18 of the Money Laundering Order 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.</li> </ul>



	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The authorities should expand the current list of categories of higher-risk customers in the Money Laundering Order to which enhanced CDD must be applied and consider including, for example, private banking and nonresident customers.</li> <li>• 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 Money Laundering Order and issue further guidance as needed to limit the practice.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p>R.6</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> <p>R.8</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>
<p>3.3 Third parties and introduced business (R.9)</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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"> <li>o intermediaries or introducers outside Jersey that could be legally restricted in providing CDD evidence to Jersey institutions;</li> <li>o certain domestic DNFBPs until newly-introduced AML/CFT requirements have been fully implemented.</li> </ul> </li> <li>• 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.</li> </ul>
<p>3.4 Financial institution secrecy or confidentiality (R.4)</p>	<ul style="list-style-type: none"> <li>• Provide explicitly that financial institutions do not breach their confidentiality duty in exchanging customer information between themselves for AML/CFT purposes.</li> </ul>

<p>3.5 Record keeping and wire transfer rules (R.10 &amp; SR.VII)</p>	<p>SR.VII</p> <ul style="list-style-type: none"> <li>• The authorities should take steps to ensure a stricter approach by Jersey financial institutions when dealing with incoming wire transfers that lack originator information.</li> </ul>
<p>3.6 Monitoring of transactions and relationships (R.11 &amp; 21)</p>	<ul style="list-style-type: none"> <li>• The authorities should amend the power to apply countermeasures to remove the limitation tying it to the actions of the FATF.</li> </ul>
<p>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</p>	<p>R.13 / SR.IV</p> <ul style="list-style-type: none"> <li>• The JFCU and JFSC should consider steps to enhance the timeliness of reporting of suspicious transactions to the JFCU.</li> </ul> <p>R.14</p> <ul style="list-style-type: none"> <li>• The law should be amended to limit protection for those reporting suspicious transactions to those acting in good faith.</li> <li>• The tipping-off offense should be broadened by removing the limitation referring to situations that might prejudice an investigation.</li> </ul>
<p>3.8 Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</p>	<p>R.15</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul> <p>R.22</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
<p>3.9 Shell banks (R.18)</p>	
<p>3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 &amp; 25)</p>	<p>R.17</p> <ul style="list-style-type: none"> <li>• The authorities should consider expanding the range of sanctioning powers available to the JFSC to include monetary fines.</li> </ul>

3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> <li>The JFSC should sustain its training and onsite supervision to improve compliance for MSBs.</li> </ul>
<b>4. Preventive Measures – Nonfinancial Businesses and Professions</b>	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>The authorities should: <ul style="list-style-type: none"> <li>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.</li> <li>Repeal the concession that allows lawyers and accountants to self-certify identification of existing clients.</li> <li>Sustain close supervision of TCBs to improve compliance with CDD and record keeping requirements.</li> </ul> </li> <li>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.</li> </ul>
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>The authorities should continue to conduct on-site monitoring of SAR reporting practices by lawyers, accountants, and estate agents.</li> </ul>
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> <li>The JFSC should continue with testing implementation of AML/CFT requirements for all DNFBPs not previously subject to its supervision.</li> </ul>
4.4 Other designated nonfinancial businesses and professions (R.20)	None
<b>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</b>	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	None
5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> <li>Even though the vast majority of trust arrangements are covered by the CDD requirements of the Money Laundering Order, 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.</li> <li>The authorities should put in place measures to ensure that beneficial ownership information is obtained, verified, and maintained for all general partnerships.</li> </ul>
5.3 Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> <li>Based on registration information, the authorities should analyse the FT vulnerability of the NPO sector.</li> </ul>

<b>6. National and International Cooperation</b>	
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"> <li>• The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented.</li> <li>• The authorities should ensure that all provisions of the United Nations International Convention for the Suppression of Financing of Terrorism are implemented.</li> <li>• Jersey should consider requesting extension of the remaining 10 international counter-terrorism related legal instruments.</li> </ul>
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
6.4 Extradition (R. 39, 37 & SR.V)	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
6.5 Other Forms of Cooperation (R. 40 & SR.V)	None
<b>7. Other Issues</b>	
7.1 Resources and statistics (R.30 & 32)	<ul style="list-style-type: none"> <li>• Provide additional resources to the JFCU to deal with increasing workload.</li> <li>• The JFCU should develop its capacity to maintain relevant statistics on all aspects of SAR analysis and external cooperation.</li> </ul>

### **3.2. Appendix II – Relevant EU texts**

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

#### **Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):**

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

- (i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
- (ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3<sup>rd</sup> Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

#### **Article 2 of Commission Directive 2006/70/EC (Implementation Directive):**

##### **Article 2**

##### **Politically exposed persons**

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliaments;
- (c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
- (b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

### 3.3. Appendix III - Table of Referenced Legislation

Reference	Legislation
A.	Banking Business (Jersey) Law 1991 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.075">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.075</a>
B.	Collective Investment Funds (Jersey) Law 1988 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.100">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.100</a>
C.	Companies (Jersey) Law 1991 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.125">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.125</a>
D.	Control of Borrowing (Jersey) Order 1958 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=24.150">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=24.150</a>
E.	Control of Housing and Work (Jersey) Law 2012 <a href="http://www.jerseylaw.je/law/lawsinforce/htm/LawFiles/2012/L-31-2012.pdf">http://www.jerseylaw.je/law/lawsinforce/htm/LawFiles/2012/L-31-2012.pdf</a>
F.	Customs and Excise (Jersey) Law 1999 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=24.660">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=24.660</a>
G.	Drug Trafficking Offences (Jersey) Law 1988 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.580">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.580</a>
H.	Financial Services (Jersey) Law 1998 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.225">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.225</a>
I.	Foundations (Jersey) Law 2009 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.265">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.265</a>
J.	Gambling (Jersey) Law 2012 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=11.300">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=11.300</a>
K.	Income Tax (Jersey) Law 1961 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=24.750">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=24.750</a>
L.	Incorporated Limited Partnerships (Jersey) Law 2011 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.370">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.370</a>
M.	Insurance Business (Jersey) Law 1996 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.425">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.425</a>
N.	Limited Partnerships (Jersey) Law 1994 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.500">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.500</a>
O.	Money Laundering (Amendment No. 4) (Jersey) Order 2010 <a href="http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2010%2fR%26O-002-2010.htm">http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2010%2fR%26O-002-2010.htm</a>

Reference	Legislation
P.	Money Laundering (Amendment No. 5) (Jersey) Order 2013 <a href="http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2013%2fR%26O-115-2013.htm">http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2013%2fR%26O-115-2013.htm</a>
Q.	Money Laundering (Jersey) Order 2008 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.780.30">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.780.30</a>
R.	Money Laundering and Weapons Development (Directions) (Iran) (Jersey) Order 2013 <a href="http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2013%2fR%26O-007-2013.htm">http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fhtm%2fROFiles%2fR%26OYear2013%2fR%26O-007-2013.htm</a>
S.	Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.685">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.685</a>
T.	Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.770">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.770</a>
U.	Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.780.60">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.780.60</a>
V.	Proceeds of Crime (Jersey) Law 1999 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.780">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.780</a>
W.	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.785">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=8.785</a>
X.	Separate Limited Partnerships (Jersey) Law 2011 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.780">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.780</a>
Y.	Terrorism (Jersey) Law 2002 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=17.860">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=17.860</a>
Z.	Terrorist Asset-Freezing (Jersey) Law 2011 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=17.861">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=17.861</a>
AA.	Trusts (Jersey) Law 1984 <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.875">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.875</a>

***Table of other referenced documentation***

Reference	Document
1.	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws <a href="http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.875">http://www.jerseylaw.je/law/lawsinforce/chapter.aspx?chapter=13.875</a>



2.	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector <a href="http://www.jerseyfsc.org/anti-money_laundering/other_businesses_and_organisations/aml_cft_handbook.asp">http://www.jerseyfsc.org/anti-money_laundering/other_businesses_and_organisations/aml_cft_handbook.asp</a>
3.	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector <a href="http://www.jerseyfsc.org/anti-money_laundering/other_businesses_and_organisations/aml_cft_handbook.asp">http://www.jerseyfsc.org/anti-money_laundering/other_businesses_and_organisations/aml_cft_handbook.asp</a>
4.	Island Strategy to Counter Money Laundering and the Financing of Terrorism <a href="http://www.jerseyfsc.org/anti-money_laundering/information_and_publications/island_strategy.asp">http://www.jerseyfsc.org/anti-money_laundering/information_and_publications/island_strategy.asp</a>
5.	Consultation Paper No. 7 2013: Revision to the Money Laundering (Jersey) Order 2008 <a href="http://www.jerseyfsc.org/pdf/Consultation_Paper_No7_2013_ML_Order.pdf">http://www.jerseyfsc.org/pdf/Consultation_Paper_No7_2013_ML_Order.pdf</a>
6.	Feedback on Consultation Paper No. 7 2013: Revision to the Money Laundering (Jersey) Order 2008 <a href="http://www.jerseyfsc.org/pdf/Feedback_to_CP_No_7_2013_ML_Order.pdf">http://www.jerseyfsc.org/pdf/Feedback_to_CP_No_7_2013_ML_Order.pdf</a>
7.	Guidance on sanctions may be found at: <a href="http://www.jerseyfsc.org/the_commission/sanctions/index.asp">http://www.jerseyfsc.org/the_commission/sanctions/index.asp</a> .
8.	Guidance on proliferation financing may be found at: <a href="http://www.jerseyfsc.org/the_commission/proliferation_financing/index.asp">http://www.jerseyfsc.org/the_commission/proliferation_financing/index.asp</a> .
9.	Common Understanding <a href="http://ec.europa.eu/internal_market/company/docs/financial-crime/3rd-country-equivalence-list_en.pdf">http://ec.europa.eu/internal_market/company/docs/financial-crime/3rd-country-equivalence-list_en.pdf</a>
10.	Global Forum report <a href="http://www.eoi-tax.org/jurisdictions/JE#p1">http://www.eoi-tax.org/jurisdictions/JE#p1</a>
11.	Action plan on transparency of legal persons and arrangements <a href="http://www.gov.je/News/2013/pages/StatementActionPlanG8.aspx">http://www.gov.je/News/2013/pages/StatementActionPlanG8.aspx</a> .