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EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND THE
FINANCING OF TERRORISM
(MONEYVAL)

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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

JERSEY

9 DECEMBER 2015

Jersey is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the mutual evaluation report on the 4th assessment visit of Jersey was adopted at its 49th Plenary (Strasbourg, 9 December 2015)

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LIST OF ACRONYMS USED

AIF	Alternative investment fund
AIFMD	Alternative Investment Fund Managers Directive
Al-Qa'ida Order	Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002
AML/CFT	Anti-money laundering/combating the financing of terrorism
AML/CFT Handbooks	<ul style="list-style-type: none"> • Handbook for Estate Agents and High Value Dealers • Handbook for the Accountancy Sector • Handbook for the Legal Sector • Handbook for Regulated Financial Services Business
Banking Business Law	Banking Business (Jersey) Law 1991
Basel Committee	Basel Committee on Banking Supervision
CARIN	Camden Asset Recovery Inter-Agency Network
Cash Seizure Law	Proceeds of Crime (Cash Seizure) (Jersey) Law 2008
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
Civil Asset Recovery (International Cooperation) Law	Civil Asset Recovery (International Cooperation) (Jersey) Law 2007
Collective Investment Funds Law	Collective Investment Funds (Jersey) Law 1988
Commission / JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998
Companies Law	Companies (Jersey) Law 1991
Control of Borrowing Law	Control of Borrowing (Jersey) Law 1947
Control of Borrowing Order / COBO	Control of Borrowing (Jersey) Order 1958
Criminal Justice (International Cooperation) Law	Criminal Justice (International Co-operation) (Jersey) Law 2001
Customs	Customs and Immigration Service
DNFBP	Designated Non-Financial Businesses and Professions

Drug Trafficking Offences Law	Drug Trafficking Offences (Jersey) Law 1988
EEA	European Economic Area
Enforcement of Confiscation Orders Regulations	Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008
Enhanced risk state	A country or territory in relation to which the FATF has called for the application of enhanced CDD measures
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EU Implementation Law	European Union Legislation (Implementation) (Jersey) Law 2014
Existing customer	A customer with whom a relevant person has a business relationship that started before the Money Laundering Order came into force
FATF	Financial Action Task Force
Financial Services Law	Financial Services (Jersey) Law 1998
FIU	Financial Intelligence Unit
Foundations Law	Foundations (Jersey) Law 2009
FT / TF	Financing of terrorism
Gambling Law	Gambling (Jersey) Law 2012
GIFCS	Group of International Financial Centre Supervisors (formerly OGBS)
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Handbook for Estate Agents and High Value Dealers	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Estate Agents and High Value Dealers
Handbook for the Accountancy Sector	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector
Handbook for the Legal Sector	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector
Handbook for Regulated Financial Services Business	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business

IAIS	International Association of Insurance Supervisors'
ICC	Incorporated Cell Company
ILP	Incorporated limited partnership
IMF	International Monetary Fund
Insurance Business Law	Insurance Business (Jersey) Law 1996
Investigation of Fraud Law	Investigation of Fraud (Jersey) Law 1991
IOSCO	International Organisation of Securities Commissions
Jersey Finance	Jersey Finance Limited
JFCU	Joint Financial Crimes Unit
JGC	Jersey Gambling Commission
LEA	Law Enforcement Agency
Limited Liability Partnerships Law	Limited Liability Partnerships (Jersey) Law 1997
Limited Partnerships Law	Limited Partnerships (Jersey) Law 1994
LLP	Limited liability partnership
Misuse of Drugs Law	Misuse of Drugs (Jersey) Law 1978
ML	Money laundering
MLA	Mutual Legal Assistance
MLAT	Mutual Legal Assistance Treaty
MLCO	Money Laundering Compliance Officer
MLRO	Money Laundering Reporting Officer
Money Laundering Order	Money Laundering (Jersey) Order 2008
MOU	Memorandum of Understanding
MSB Exemptions Order	Financial Services (Money Service Business) (Exemptions))Jersey) Order 2007
NPO	Non-profit organisation
NPO Law	Non Profit Organizations (Jersey) Law 2008
Obliged person	A person who the relevant person knows or has reasonable grounds

	for believing is a relevant person in respect of whose financial services business the Commission discharges supervisory functions, or is a person carrying on equivalent business
OGBS	Offshore Group of Banking Supervisors (now GIFCS)
PCC	Protected cell companies
PEP	Politically Exposed Person
Police	States of Jersey Police Force
Proceeds of Crime and Terrorism Law	Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014
Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
PTC	Private Trust Company
Qualified member	With respect to a foundation, at least one council member is a regulated person being a trust company services provider based in Jersey and registered with the Commission
Registrar	Registrar of companies
Regulated business	Means a financial services business in respect of which a person – (a) is registered under the Banking Business Law; (b) holds a permit or is a certificate holder under the Collective Investment Funds Law; (c) is registered under the Financial Services Law; or (d) is authorized by a permit under the Insurance Business Law;
Regulatory laws	Is a generic term which covers the following individuals laws: (a) Collective Investment Funds (Jersey) Law 1988; (b) Banking Business (Jersey) Law 1991; (c) Insurance Business (Jersey) Law 1996; and (d) Financial Services (Jersey) Law 1998.
Relevant person	Any person who is carrying on financial services business (a term that is defined in Schedule 2 to the Proceeds of Crime Law) in or from within Jersey, and any legal person established under Jersey law carrying on financial services business (wherever in the world that activity is carried on)
SAR	Suspicious activity report
SLP	Separate limited partnerships
SRO	Self-Regulatory Organisation

STR	Suspicious transaction report
Strategy	Island Strategy to Counter Money Laundering and the Financing of Terrorism
Strategy Group	Jersey Financial Crime Strategy Group
the States	Assembly of the States of Jersey
Supervisory Bodies Law / SBL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Tax Law	Income Tax (Jersey) Law 1961
TCB	Trust Company Business / Trust and Company Service Providers
TCSP / T&CSP	
Terrorism Law	Terrorism (Jersey) Law 2002
Terrorism Order	Terrorism (United Nations Measures) (Channel Islands) Order 2001
Terrorist Asset-Freezing Law	Terrorist Asset-Freezing (Jersey) Law 2011
Tipping Off Exceptions Regulations	Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014
Trust Company Business Exemption Order	Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000
Trust Company Business Exemption Order No. 2	Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000
Trust Company Business Exemption Order No. 3	Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001
Trusts Law	Trusts (Jersey) Law 1984
Type A	Relevant person who intends to carry on a specified financial services business (specified in the Schedule to the SBL) must register under Article 13 or 15 of the SBL e.g. a person carrying on lending business
Type B	Type A person that is carrying on regulated business e.g. a person carrying on deposit-taking and leasing business
Type C	A person carrying on regulated business that does not also carry on a specified financial services business e.g. a person carrying on investment business
UK	United Kingdom
UN	United Nations

UNR	United Nations report
UNSCC	United Nations Security Council Committee
UNSCR	United Nations Security Council Resolution
Wire Transfer Regulations	Community Provisions (Wire Transfers) (Jersey) Regulations 2007

I. PREFACE

1. This is the twenty sixth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the last assessment report prepared by the International Monetary Fund (IMF). The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the previous assessment.
2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the previous assessment. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**
3. The evaluation was based on the laws, regulations and other materials supplied by United Kingdom Crown Dependency of Jersey, and information obtained by the evaluation team during its on-site visit to Jersey from 19 to 24 January 2015, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Jersey. A list of the bodies met is set out in Annex I to the mutual evaluation report.
4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL experts in criminal law, law enforcement and regulatory issues and comprised: Mr Yehuda Shaffer (Deputy State Attorney, Ministry of Justice, Israel) who participated as legal evaluator, Ms Tanjit Sandhu Kaur (Responsible of the supervision division, Financial Intelligence Unit, Principality of Andorra) and Mr Andrew Strijker (scientific expert to MONEYVAL) who participated as financial evaluators, Mr Aivar Paul (Head of the FIU of Estonia) who participated as a law enforcement evaluator and Mr John Ringguth (Executive Secretary to MONEYVAL), and Ms Livia Stoica Becht, Mr Michael Stellini and Ms Astghik Karamanukyan, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.
5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:
 1. General information
 2. Legal system and related institutional measures
 3. Preventive measures - financial institutions
 4. Preventive measures – designated non-financial businesses and professions
 5. Legal persons and arrangements and non-profit organisations
 6. National and international cooperation
 7. Statistics and resources

Annex (implementation of EU standards).
Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the detailed assessment report on Jersey's compliance with the anti-money laundering and terrorist financing international standards that was published by the IMF on its website in September 2009. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the IMF report continues to apply.
7. Where there have been no material changes from the position as described in the IMF report, that text is considered to remain appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.
8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2015 or shortly thereafter.

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the United Kingdom Crown Dependency of Jersey at the time of the 4th on-site visit (19 to 24 January 2015) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Jersey received non-compliant (NC) or partially compliant (PC) ratings in its IMF report. This report is not, therefore, a full assessment against the FATF 40 Recommendations 2003 and 9 Special Recommendations 2004 but is intended to update readers on major issues in the AML/CFT system of Jersey.

2. Key findings

2. **As a well-established international financial centre, with a mature and sophisticated AML/CFT regime, Jersey is nevertheless confronted with a range of money laundering risks**, stemming from the nature of its financial sector business conducted in or from Jersey, which creates a material vulnerability to being used in the layering and integration stages of money laundering schemes. These generally involve proceeds generated outside the island. ML risks arising from the very low and falling domestic criminality rate are generally not considered as high. With respect to TF risks, Jersey's vulnerability arises from its global connections rather than local criminal/terrorist activity. The authorities, through the Financial Crime Strategy Group, monitor ML/TF risks on an on-going basis and have taken a number of measures aimed at mitigating identified risks.
3. **Jersey has made significant progress since its last evaluation by the IMF, by bringing its AML/CFT regime more closely in line with the FATF 40 Recommendations (2003) and 9 Special Recommendations (2004) recommendations**, and by taking measures to consolidate its legal and institutional framework for combating money laundering (ML) and terrorist financing (TF). These reforms reflect the authorities' political commitment to counter money laundering and the financing of terrorism, which is also embodied in the AML/CFT strategy and action plan which were developed since the last evaluation. A number of important legal changes were implemented shortly before or days after the on-site visit, bringing the legal framework to a high level of compliance with the global standards assessed in this report.
4. **Jersey has amended its legislation to bring both the money laundering and the financing of terrorism offences in line with the relevant international standards**. Most of the previously identified shortcomings have been addressed prior to or shortly after the visit. While the FT offence has so far not been tested before the courts in Jersey, there have been several important convictions for money laundering.
5. **The legal framework governing provisional measures and confiscation** is comprehensive and has been efficiently used in several cases regarding both proceeds of predicate offences and in respect of money laundering. However, the total confiscated sums are considered to be low.
6. **Several legal and operational changes have been implemented since the previous evaluation, which impact positively on the effectiveness of the work carried out by the**

FIU. Jersey has yet to address the remaining issues with respect to the autonomy of the FIU, by reviewing its legal status and its positioning within the Police's overall structure.

7. **The AML/CFT preventive measures to which financial institutions and DNFBPs are subject have been strengthened and updated and are largely in line with the international standard**, although some technical deficiencies remain. Reporting entities have a good understanding of their AML/CFT risks and obligations. Most financial institutions are adequately regulated and supervised, on a risk sensitive basis, with securities and insurance sector having received relatively little supervisory attention in terms of on-site visits. The Commission has adequate powers, and has applied effectively sanctions and other measures available in its supervisory function.
8. **Jersey has very well-functioning AML/CFT coordination processes at both policy and operational levels.**
9. **With respect to international co-operation, Jersey authorities have adopted a proactive approach.** This is reflected by the active FIU information exchanges with foreign counterparts, as well as, in the context of mutual legal assistance, by several positive examples of assistance provided to assist foreign countries to locate and confiscate the proceeds of crime and to prosecute the associated predicate and money laundering offences, either in Jersey or abroad.

3. Legal Systems and Related Institutional Measures

10. Previously, there were three separate pieces of legislation: the Proceeds of Crime (Jersey) Law 1999 (Proceeds of Crime Law), the Drug Trafficking Offences (Jersey) Law 1988 (Drug Trafficking Offences Law) and money laundering provisions in the Terrorism (Jersey) Law 2002 (Terrorism Law). Jersey repealed the Drug Trafficking Offences Law and consolidated in August 2014 the provisions dealing with proceeds of crime of all kinds, including the proceeds of crime relating to drug trafficking into the Proceeds of Crime Law through the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014 (hereinafter the Proceeds of Crime and Terrorism Law). The text has been further amended by the Proceeds of Crime (Amendment of Law) (Jersey) Regulations 2015, with effect on 17th of March 2015 to further address shortcomings in the definitions of "property" and of "items subject to legal professional privilege".
11. **The money laundering offence (previously criminalised in the three above pieces of legislation), as criminalized in Articles 29 to 31 of the Proceeds of Crime Law, has been brought largely in line with the relevant requirements of the convention and FATF standards, with few minor technical deficiencies, some of which may impact on the effective implementation of the ML offence.**
12. Overall, the continuing number of ML investigations, prosecutions and convictions in Jersey courts demonstrate the commitment of the Jersey authorities to pursue ML cases. There are some characteristics of an effective system, with different types of ML cases prosecuted and convicted, some of which involve third party laundering, successful prosecutions of gatekeepers, and also two significant landmark cases in 2010 involving very large proceeds of corruption and fraud committed overseas and significant confiscation orders. At the same time, several cases resulting in conviction involve relatively small proceeds, generated by domestic drugs offences. It is thus important for more suspicions of money laundering to be investigated and subsequently more cases to be prosecuted where there is evidence of domestic abuse (including when predicate offences are committed abroad) of complex legal arrangements and structures, arising from proactive parallel financial investigations in Jersey.
13. Jersey's legal framework, as set out in the Terrorism Law, as subsequently amended, adequately implements the CFT standards. The FT Convention treaties have been extended to Jersey. The use of lawful property for terrorist financing purposes is an offence under Jersey

law but not a predicate offence to money laundering when not involving "criminal property" as defined. The FT offence has never been tested before the courts in Jersey.

14. **The legal framework governing provisional measures and confiscation is comprehensive, although shortcomings remain** in the confiscation powers, especially with regard to the value confiscation of criminal assets given as gifts or settled (both before and after the criminal conduct) in complex legal structures to which offenders are beneficially entitled. There were also concerns as to whether the current provisional measures regime is fully geared to deal with all potential money laundering in the local situation. The measures in place have been efficiently used in several cases regarding both proceeds of predicate offences and in respect of money laundering. However, there remained overall effectiveness concerns given the relatively limited amounts of property seized and confiscated and considering the size and characteristics of Jersey's financial sector and its status as an international financial centre. The shortcomings may impact also in the context of the provision of international cooperation and asset freezing.
15. **Jersey has significantly improved the legal framework governing the terrorist asset freezing regime**, with the adoption of the Terrorist Asset-Freezing (Amendment of Law) (Jersey) Regulations 2015 and of a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze terrorist assets in order to comply with obligations under UNSCR 1373. Arrangements for dealing with requests for listing and de-listing designated persons, including requests for unfreezing funds and economic resources that have been frozen, are set out in a Memorandum of Understanding between the UK Foreign and Commonwealth Office (FCO) and the Minister for External Relations, signed on 11 March 2015. All financial institutions and DNFBPs met were familiar with Jersey sanctions published on the Commission website (consolidation of financial sanctions targets listed by the UN, EU, and UK), and of their duty to freeze assets. There were actual cases of asset freezing under the relevant UN lists.
16. **Jersey has implemented several legal and operational changes since the previous evaluation, which impact positively on the effectiveness of the work carried out by the FIU. However, concerns remained that domestically, FIU outputs seemed to be underutilised.** The FIU's power to obtain additional information from any reporting entity was strengthened after the onsite visit. Jersey has also enacted FIU regulations on 11th of March 2015, which formally identify the JFCU as the FIU. During 2013, a new secure online facility for the submission of SARs was put in place and over 90% of the SARs were being received electronically at the time of the on-site visit. Jersey's authorities have demonstrated with case examples the added value of FIU's analytical product. Jersey has yet to address the remaining issues with respect to the autonomy of the FIU, by reviewing its legal status and its positioning within the Police's overall structure. It should also make additional efforts to ensure that reports identifying money laundering and terrorist financing trends and patterns are issued on a more frequent basis.

4. Preventive Measures – financial institutions

17. **The AML/CFT legal framework for preventive measures has been strengthened and updated, demonstrating a high degree of technical compliance with the majority of assessed FATF standards, with minor shortcomings in certain areas and its effectiveness hampered by certain characteristics.**
18. The definition of financial institution in Jersey legislation is very broad, which results in the fact that some of the activities that do not fall under the scope of the FATF Methodology are exempted from AML/CFT obligations. There are a small number of exempted activities whose risk was not always proved to be low, therefore such activities should not be out of the scope of the AML/CFT provisions.

19. The CDD requirements are largely in line with the FATF requirements. The Money Laundering (Jersey) Order 2008 (Money Laundering Order) and the AML/CFT Handbook for Regulated Financial Services Business impose requirements on relevant persons to prevent money laundering and terrorist financing. These obligations include corporate governance, risk assessment, identification and other due diligence measures, monitoring of transactions and activity, the reporting of suspicion, employee screening, training, and record keeping. Furthermore, following the recommendation made previously, financial institutions are required to apply enhanced CDD measures to non-resident customers, private banking, legal persons and arrangements that are personal asset holding vehicles or companies with nominee shareholders or formed by bearer shares. According to the assessment team the effectiveness of the ECDD measures is highly subject to proper supervision by the Commission.
20. The definition of beneficial ownership meets the criteria of the FATF Standards in general terms. Nevertheless, at the time of the onsite visit, guidance on the term “beneficial owner” in the Handbook for Regulated Financial Services Business did not include a person exercising ultimate effective control over a trust where that person was not also the settlor, the beneficiary or the protector. Nor was it clear, in the case where such a person is a legal person, that identification measures should extend also to any person controlling that legal person through means other than ownership. This deficiency was remedied within the period of two months after the onsite visit, thus its effective implementation could not be demonstrated.
21. Furthermore, the Money Laundering Order provides for the discretion to refrain entirely from the application of certain CDD measures in defined circumstances, whereas simplified CDD in terms of the FATF Recommendations only allows for adjusting the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified. This is particularly relevant in business relationships with collective investment schemes with a limited number of investors.
22. The financial institutions met during the on-site visit clearly demonstrated that they are highly knowledgeable in respect of their AML/CFT obligations. However for customers that are trustees the assessors noted that financial institutions do not always request a copy of the trust deed/letter of wishes, or take any other appropriate measures.
23. Although there is no law of financial institution secrecy in Jersey, there is a Common Law principle of confidentiality that applies to financial institutions. Financial institutions did not report any concerns that they might be in breach of the Common Law principle of confidentiality by disclosing information to the FIU when filing a SAR. Sharing of information where required by R. 7 and R.9, as implemented under Money Laundering Order, does not raise any particular issues.
24. A large part of the international business in Jersey (which accounts for a significant portion of financial business) is introduced to banks and other financial institutions by domestic and foreign intermediaries and introducers. As a result, financial institutions quite often rely on other financial institutions or DNFBPs for the fulfilment of their CDD obligations. The effective implementation of Recommendation 9 is therefore of particular relevance in Jersey. The authorities have introduced amendments after the previous evaluation, addressing the technical shortcomings previously identified. A number of implementation concerns have nevertheless been noted, which require amendments to be made to guidance in the Handbook for Regulated Financial Services Business.
25. The record keeping requirements are fully in line with the FATF Methodology. All financial institutions demonstrated a good comprehension of the legal provisions related to record keeping. Furthermore, no specific issues of concerns have been detected regarding the ability to provide information to the competent authorities in a timely manner.
26. The suspicious activity reporting regime, as set out in the Proceeds of Crime Law and the Terrorism Law, complies with the technical requirements of R.13 and Special Recommendation IV. Guidance in the Handbook for Regulated Financial Services Business

now sets out various measures to address timeliness of reporting, both internal and for SAR processing. The FIU has had a constructive approach in assisting reporting entities in the implementation of their reporting obligations, and addressed quality concerns. The performance of the SAR regime was thus considered to be impacted by issues related to quality of SARs received and reporting patterns, where not all reports are initiated by institutions during detection of suspicious activities. FT reports appear to be triggered mainly by sanction list matches and information from media. The authorities should also thus address gaps in guidance and training for reporting entities, including also on FT related aspects, seeking to improve the performance and value of the SAR reporting regime.

27. All financial institutions are authorised and supervised by the Commission and there are sufficient powers to enable the effective supervision of AML/CFT requirements. Jersey has also recently introduced the possibility to apply administrative fines, strengthening the proportionality of its sanctioning regime. The staff of the Commission appears to be adequate and very professional. Supervision is conducted on a risk-sensitive basis which enables the Commission to prioritise regulatory work and focus on higher risk entities. This approach appears to be functioning effectively in practice. The Commission has set a higher assurance level for AML/CFT risks in the banking and TCSP sectors which results in more frequent and intensive onsite and offsite supervision. Some concerns were nevertheless expressed regarding the focus devoted in the supervisory approach to the use of some exemptions from the AML/CFT framework and cases of application of simplified identification measures. The level of the threshold and associated supervision conducted with regard to the MSBs whose turnover is less than £300,000 should be reviewed. Finally, the authorities were recommended to ensure that the Commission's existing policy statement on cross-border supervision of banks is effectively implemented, in turn to ensure that the supervision of any Jersey banks with operations off the island is appropriately calibrated to the ML/FT risks assessed, including those posed by the relative equivalence of the host jurisdiction.

5. Preventive Measures – Designated Non-Financial Businesses and Professions

28. As regards DNFBPs generally, at the time of the on-site visit there were no casinos operating in Jersey. With the recent introduction of the Gambling (Jersey) Law 2012, it is possible to set up and operate a casino on the Island. Remote gambling, including online casinos, can be licensed in Jersey, although at the time of the assessment, no license had been issued.
29. **The CDD and reliance requirements applicable to designated non-financial businesses and professions are largely the same as for financial institutions. Hence, concerns noted in respect to FIs equally applying to DNFBPs for those recommendations that are assessed in the current report, namely R.5 and 9. Overall, Jersey has addressed the technical shortcomings previously identified.** It was noted that some DNFBP activities are exempted from the application of AML/CFT measures although the risk is not always proved to be low, and this matter should be reviewed. Further measures should be taken by the authorities to ensure that DNFBPs effectively apply the recently amended ECDD measures according to the degree of risk in each business relationship.
30. The representatives of the TCSP sector demonstrated a good understanding of the inherent risks that the industry is exposed to and the internal rules and procedures that the assessment team has seen generally implemented clear customer acceptance policies and procedures. However, it was noted at the time of the visit, that some TCSPs limited the scope of identifying the beneficial owner of a company to the individual(s) having a material controlling ownership interest only.
31. In relation to real estate agents, the assessment concluded that the AML/CFT risks of this sector are considered to be low, due to the domestic nature of its business. Awareness of

AML/CFT obligations by real estate agents should be increased through awareness raising initiatives. Further measures were also considered necessary to strengthen the understanding by the auditor and accountants sector of enhanced due diligence measures with respect to certain higher risk categories of customers.

32. DNFBPs have demonstrated a good understanding of their reporting requirements and the level of cooperation with the JFCU was positively assessed. The levels of reporting have remained rather stable, with relatively low levels of SAR reporting by the legal and accountancy profession, while TCSPs remain the primary source of SARs. The comments made earlier in respect of the performance of the reporting regime and issues of concern are equally valid in the context of the DNFBPs' implementation of their reporting obligations, particularly as regards the quality of SARs received and the understanding of FT. Jersey authorities are recommended to continue their efforts to increase the effectiveness of the reporting regime by DNFBPs and the level of awareness of reporting entities, including by undertaking sectoral reviews of the performance of the reporting regime, and developing further sectoral guidance and red flags to support SAR reporting, as appropriate.

6. Legal Persons and Arrangements

33. **Company registration and the establishment of trusts remain significant activities in Jersey and are subject to strong AML/CFT requirements.** Jersey has put in place various measures to prevent and mitigate the risks of unlawful use of legal persons, through strict controls applied by the Registry, at the time of incorporation, and in certain cases on an on-going basis, as well as through requirements on TCSPs to collect and hold accurate and up to date information on beneficial ownership and checks by the supervisor that TCSPs comply with these requirements. Since the previous evaluation, and following judiciary scrutiny identifying legal gaps, the authorities have also amended the Foundation (Jersey) Law 2009 on 24th of March 2015, clarifying obligations with respect to accounting records.
34. Additional measures were considered necessary to be taken by the authorities to prevent unlawful use of a small number of incorporated associations, in particular with respect to specific obligations regarding direct or indirect ultimate beneficial owners. Awareness raising needs to be further conducted regarding specifically the control element of beneficial ownership to ensure that institutions do not solely focus on the material ownership element. The Companies (Jersey) Law 1991 should explicitly prohibit the issuance of bearer shares. Finally, authorities should consider a more frequent update of the publically available register of shareholders i.e. more than once a year.
35. With respect to trusts, the authorities have introduced changes to the Money Laundering Order and the AML/CFT Handbooks to address the fact that guidance did not clearly explain that the trustee should also identify and verify the identity of any person exercising ultimate effective control over the trust who was not a settlor, protector or beneficiary. The recent entry into force of these changes as of 24th March 2015 did not enable an assessment of their application. Some concerns relate to the adequacy of measures to ensure that accurate, complete and current beneficial ownership information is available for family trusts (where the trustee may not be regulated) or trusts administered by regulated TCSPs through private trust companies.
36. Recent court cases revealed the importance that the 'letter of wishes' could have in determining who might in practice be the controller. We would recommend therefore that the Jersey authorities require financial institutions to either ask for documents, such as the letter of wishes, to corroborate who the ultimate controlling beneficial owner is or to receive appropriate assurance and to keep evidence that relevant documents (such as the letter of wishes) do not contain information that is contradictory to the letter or wishes (or similar),

both at the start of the relationship and during the process of ongoing due diligence. Jersey authorities should also provide guidance on this issue.

7. National and International Co-operation

37. **Jersey has very well-functioning AML/CFT coordination processes at both policy and operational levels.** The Financial Crime Strategy Group, which includes the major AML/CFT stakeholders, drives the main strategic improvements that are being made to Jersey's AML/CFT system. It ensures that the competent authorities at both policy - making and operational level have effective mechanisms in place to cooperate and, where appropriate, coordinate with each other. It may also recommend changes in the allocation and prioritisation of AML/CFT resources, where needed, to ensure that risks identified are mitigated effectively. Jersey should continue enhancing inter-agency cooperation in support of AML/CFT efforts, notably between the FIU and the Commission, with a view to developing further the information sharing and exchanges related to ML/TF risks within the jurisdiction and the level of compliance with AML/CFT requirements by the supervised entities. Given that a number of legal changes have taken place recently, a stronger focus should be devoted to reviewing comprehensively the effectiveness of the AML/CFT system.
38. **The United Kingdom, which is ultimately responsible for Jersey's international relations and for extending, upon Jersey's request, the UK's ratification of relevant conventions, has done so with respect to ten relevant international and European conventions since 2009, including the United Nations Convention against Transnational Organized Crime (Palermo Convention) on 17 December 2014.** Jersey has adequately implemented the requirements of the Terrorist Financing Convention and the large majority of the provisions of the Palermo and Vienna Conventions. Measures to provisionally restrain and confiscate proceeds of crime and instrumentalities used/intended for use in the crime are not fully in line with the international standard, and impact also on the effectiveness of action to be taken with respect to funds in the context of the application of measures for the implementation of SR.III, whenever this involves criminal proceedings regarding assets belonging to terrorist organisations.
39. **International co-operation is fundamental in the context of an international financial centre, such as Jersey. The Jersey law officers, the FIU and the Commission have adopted a generally responsive approach and co-operated constructively with foreign counterparts.**
40. Mutual legal assistance is rendered on the basis of the Criminal Justice (International Co-operation) (Jersey) Law 2001, which applies to all offences for which the maximum sentence in Jersey is not less than one year's imprisonment ("serious offences") and therefore applies to all money laundering offences, regardless of the predicate offence, as well as to terrorism financing offences. MLA is also provided based on the Investigation of Fraud (Jersey) Law 1991 if the case for which assistance has been requested involves fraud related money laundering, production, search and seizure of information, document or evidence. In addition, the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 (Enforcement of Confiscation Orders Regulations), and the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 contain specific provisions dealing with the seizing of property upon request by a foreign jurisdiction to secure funds or property that is or may become subject to foreign confiscation orders. Guidelines regarding Mutual Legal Assistance have also been published by the Attorney General to assist co-operation.
41. International judicial co-operation, both in mutual legal assistance (incoming and outgoing) and extradition, has been actively provided, and though over focused on fiscal matters, the authorities have demonstrated having adopted a proactive approach by seeking to assist foreign countries to locate and confiscate the proceeds of crime as well as prosecute the

associated predicate and money laundering offences either in Jersey or abroad. Although refusals on the ground of falling below the threshold figures set out in the Attorney General's Guidelines¹, have been very rare, it is not excluded that these monetary thresholds could have inhibited countries from requesting MLA assistance.

42. The FIU and the Commission have also demonstrated that they have cooperated constructively and in a timely manner with foreign counterparts, and this was supported by feedback received from other countries. The Commission has received and responded to several requests for investigatory assistance from overseas regulatory authorities in the period under review, and has shared on a regular basis information with foreign supervisory authorities for the purpose of assisting with licensing and other supervisory functions. So far, the Commission did not very often request information from foreign supervisors related to AML/CFT, which triggered effectiveness questions.
43. The FIU is authorised to make disclosures to foreign FIUs on the basis of a delegated authority from the Attorney General. The latter can and has been occasionally involved in the decision-making process for approving information sharing with foreign counterparts. As this may restrict the FIU's powers to exchange information, Jersey should take measures to analyse the current set up in order to ensure that the FIU has a clear mandate to decide solely on information sharing, without any involvement of other counterparts, in order to ensure effective and prompt information sharing.

8. Resources and statistics

44. Jersey gathers comprehensive statistics on matters relating to the criminalisation of money laundering, the financing of terrorism, the operation of the FIU (including receipt and dissemination of SARs), the supervision of financial institutions and DNFBPs, as well as on national and international cooperation.
45. The Jersey competent authorities are staffed with experienced and well-trained staff members. Jersey is nevertheless recommended to review on a regular basis the adequacy of the FIU's resources, and to further enhance the capacity of the relevant authorities to successfully investigate suspicions of domestic money laundering originating from SARs, foreign FIU inquiries or MLA requests.

¹ The Attorney General has abolished on 13 August 2015 the Guideline MLA figures of £10,000 (*Criminal Justice (International Co-operation) (Jersey) Law 2001*) and £2,000,000 (*Investigation of Fraud (Jersey) Law 1991*), with each case being decided on its individual merits.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on Jersey

1. This section updates the detailed information in the detailed assessment report on Jersey's compliance with the anti-money laundering and terrorist financing international standards, which was published by the International Monetary Fund in September 2009². It includes information on the UK Crown Dependency of Jersey, its economy, the system of government, the legal system and its hierarchy of norms, transparency, good governance, ethics and measures to deal with corruption. As such, pre-2009 information will not be repeated; however, where appropriate, information will be provided to ensure a basic understanding of the jurisdiction's political, legal and judicial system.

a. Geography and population

2. Jersey is an island with a total surface area of 45 square miles located 22.5 kilometres off the north-west coast of France and 137 kilometres from the English coast. It is divided into 12 parishes. The last population census was undertaken in March 2011 and the total number of inhabitants reached 97,857, of which 34% live in Saint Helier, the capital and only city.
3. At the time of the 2011 census, half the Island's population were Jersey-born; 31% were born elsewhere in the British Isles, 7% were from Portugal or Madeira, 8% from other European countries and 4% from the rest of the world. Persons wishing to buy and occupy property in Jersey must meet certain legislative criteria to become « residually qualified » and 85% of the relevant population was so qualified. The criteria are primarily based on a period of residence.

b. System of government

4. Jersey is a self-governing parliamentary democracy under a constitutional monarchy, with its own financial, legal and judicial systems, and the power of self-determination. It was part of the ancient Duchy of Normandy, and is therefore ruled by the Duke of Normandy - a title held by the reigning Monarch of the United Kingdom, though unrelated to the duties as king or queen of the UK.
5. The Bailiwick of Jersey has the status of a British Crown Dependency, and as such is not part of the United Kingdom. The Island is not represented in the UK parliament, whose Acts only extend to Jersey if expressly agreed by the Island that they should do so. Jersey belongs to the Common Travel Area and the definition of "United Kingdom" in the British Nationality Act 1981 is interpreted as including the UK and the Islands together. Persons who are born, adopted, registered or naturalised in Jersey are British citizens and are consequently citizens of the European Union, as are those who descend from one or more parents who are British citizens.
6. The UK Government is ultimately responsible for Jersey's international relations and defence, while Jersey has autonomy in relation to its domestic affairs, including taxation. Within the United Kingdom government, responsibility for relations between Jersey (and the other Crown Dependencies³) and the United Kingdom lies with the Privy Counsellor for the Crown Dependencies i.e. the Secretary of State of Justice and Lord Chancellor. The day to day administration in this role is therefore exercised by the Crown Dependencies Branch within the International Directorate of the Ministry of Justice.

² Readers should refer to the information in this section of the IMF assessment report on Jersey (IMF Country Report No. 09/280) : <http://www.imf.org/external/pubs/ft/scr/2009/cr09280.pdf>

³ Crown Dependencies is a collective name for Guernsey, the Isle of Man and Jersey.

7. The head of state's representative and adviser on the Island is the Lieutenant Governor of Jersey. He is a point of contact between Jersey ministers and the Government of the United Kingdom and carries out executive functions in relation to immigration control, deportation, naturalisation and the issue of passports. Aside from the Lieutenant Governor, the Crown also appoints the Bailiff, Deputy Bailiff, Attorney General and Solicitor General. In practice, the process of appointment involves a panel in Jersey which select a preferred candidate whose name is communicated to the UK Ministry of Justice for approval before a formal recommendation is made to the Queen.
8. Executive powers are exercised by a Chief Minister and ten ministers, known collectively as the Council of Ministers. The Chief Minister is elected by the members of the Assembly of the States of Jersey (hereinafter referred to as "States") and he nominates the other ten ministers, who are then voted on also by the States. Other executive powers are exercised by the Connétables and a Parish Assembly in each of the twelve parishes. The Connétable is the head of each parish; he is elected in a public election for a four-year term and also represents the municipality in the Assembly of the States of Jersey.
9. The parliamentary body responsible for adopting legislation and scrutinising the Council of Ministers is the Assembly of the States of Jersey. Forty-nine elected members (Senators, Deputies and Connétables) sit in the unicameral assembly, together with five non-elected, non-voting members appointed by the Crown (the Bailiff, the Lieutenant Governor, the Dean of Jersey, the Attorney General and the Solicitor General).

c. Judicial System

10. The courts in Jersey are the Magistrate's Court, the Royal Court, the Court of Appeal, Petty Debts Court, a Youth Court and a Youth Appeal Court. In addition, the Judicial Committee of the Privy Council hears appeals from the Court of Appeal.
11. The Magistrate's Court is a court of summary jurisdiction. In criminal cases, the maximum sentencing jurisdiction of the Magistrate's Court is confined to imposing a fine of no more than £5,000 and/or a sentence of imprisonment of not more than twelve months. Appeals from the Magistrate's Court go before the Royal Court.
12. The Royal Court is the oldest of the Island's courts. The permanent members of the Royal Court are the Bailiff and Deputy Bailiff (judges of law) and twelve Jurats (judges of fact), and in criminal cases a jury is also convoked. Ad hoc judges of law (Commissioners) may be appointed by the Bailiff on a full time or case by case basis, to discharge the judicial functions of the Bailiff. The Court of Appeal has civil and criminal jurisdiction and hears appeals from the Royal Court.

d. Legal system and hierarchy of norms

13. The system of laws in Jersey has been influenced by several different legal traditions, in particular Norman customary law, English common law and modern French civil law.
14. The legislative sources of law in Jersey are as follows: Laws; Orders; Permanent Regulations; Triennial Regulations; Prerogative Orders in Council; Acts of UK Parliament, and subordinate legislation thereunder; and Royal charters, which set out the ancient rights of the Islanders.
15. The proposition of a Law ('Projet de Loi') may be introduced to the States by a Minister, any States Member, the Council of Ministers, the States Employment Board, certain committees, a scrutiny panel or the Comité des Connétables. After the proposition, the draft goes through three readings at the States, during which it may be referred to scrutiny although in practice this will occur before the States' debate. If the draft Law is approved, it becomes an "Act". Primary laws in Jersey are subject to the provision of Royal Assent by the Queen. The "Act" must first be transmitted by the Lieutenant Governor to the Ministry of Justice. This transmission includes an opinion from the Law Officers that Her Majesty may be properly advised to give assent to the Law. Following consideration by lawyers within the Ministry of Justice and if appropriate by

other department(s) of HM Government, the Lord Chancellor makes his recommendation to Her Majesty in Council. Subsequently the Law is returned to Jersey and registered in the Royal Court of Jersey. The Law comes into force either at such a time specified in the Law or alternatively through the adoption of an “Appointed Day Act” by the States Assembly. The Law must also be published by the States Greffier in the Jersey Gazette.

16. Regulations (permanent or triennial) follow the exact same procedure as draft Law, albeit they do not require Royal Assent as they are either made under a power delegated to the States by a principal law or an Order in Council.
17. Orders and Rules are instruments made in exercise of powers conferred by Laws, Regulations or Order in Council extending UK Acts of Parliament. The power to make an Order depends on the terms of the relevant legislation, generally the responsibility for making an Order lies with the relevant Minister. Currently, an Order is not generally submitted to the States for prior approval, but it is promulgated by publication in the Jersey Gazette. Further, the States may by simple majority annul an Order. Rules generally relate to court procedure and are made by the Court.
18. Jersey’s legal system does not follow the strict rules of binding precedent that exist in common law jurisdictions such as England and Wales. The Royal Court is not bound by its own previous decisions on a point of law, but will generally follow them unless persuaded that the earlier decision was decided incorrectly.

e. Economy

19. The official currency of Jersey is the Jersey pound, which is on a par with the British pound (GBP). The main economic indicator used to measure the value of the entire Jersey economy is the GVA (Gross Value Added) and the size of Jersey’s economy, as measured by GVA, was £3.6 billion in 2012. The GVA was estimated as £3,688 million and £3,703 million in 2012 and 2013, respectively.
20. Jersey’s economy is based on financial services (42% of GVA in 2013), public administration (9.5% of GVA in 2013), wholesale and retail (7.3% of GVA in 2013) and construction (5.7% of GVA in 2013). The remaining 35.5% of GVA arises from hotels, restaurants, bars, transport and storage, agriculture, electricity, gas and water provision and other miscellaneous business activities⁴.
21. The financial services industry is a key sector of Jersey’s economy accounting for around 40% of the total economic activity and employing more than a fifth of the workforce (12,770). The sectors of the industry, which includes banking, trusts, fund management, company administration, legal firms, accountancy firms, investment advisory services and the servicing of a wide range of corporate vehicles, are significant contributors to the local economy. Jersey attract deposits from customers outside of the Island, seeking the advantages such as neutral tax burdens. As of 31 December 2014, 52.8% of the deposits in Jersey’s banks were not from Jersey/UK clients (the regions with the highest number of deposits being the Middle East with 14.7% and European States outside of the EU with 12.2%). Companies were originally subordinated to a tax system which exempted foreign investors from corporation tax and levied a 20% rate on Jersey residents. Since 2009 a “0/10 tax” has been introduced, which exempts all businesses except those in financial services or utility companies from having to pay any corporation tax (0%), while leaving the financial services and utility companies to pay a low tax rate (10%).
22. Jersey ranks 54 in the 2015 Global Financial Centres Index. A private survey issued in 2013⁵ considered the business conducted by Jersey as an international financial centre and estimated, at that time, that Jersey was custodian of £1.2 trillion of wealth: £200 billion in banks; £400 billion

⁴ See *Jersey in Figures 2014* produced by the States of Jersey Statistics Unit.

⁵ See “Jersey’s value to Britain”: <http://www.jerseyfinance.je/media/JerseyBritain/CEReport.pdf>

in approximately 25,000⁶ Jersey trusts administered by regulated TCSPs and established by private individuals (of which 94% have been settled there by individuals resident outside the British Isles or by non-domiciled persons); £400 billion in specialist structures for businesses and institutions; and £200 billion in administered or managed funds. Two-fifths of all assets administered or managed across the whole of the Island's financial and wealth management industry come from markets beyond the European Union.

23. The Statistics Unit of the Chief Minister's Department also issues an annual survey of Jersey's financial sector overall and also for individual sub-sectors (Accountancy; Banking; Fund management; and Trust & company administration (including Legal).

Jersey's financial services sector⁷ in 2014:

- total **net profit** was £1,470 million, an increase of £290 million (25%) compared with 2013
- the Banking sub-sector accounted for four-fifths (81%) of total net profit;
- net profit by sub-sector was:
 - o Banking: £1,192 million
 - o Trust & company administration: £140 million
 - o Legal: £81 million
 - o Fund management: £35 million
 - o Accountancy: £26 million

Source: Government of Jersey Statistics Unit⁸

f. International relations

24. As a Crown Dependency, Jersey cannot sign or ratify international conventions in its own right, unless entrusted to do so. The UK is therefore ultimately responsible for Jersey's international relations and, according to the Framework Agreement, the UK will not act internationally on Jersey's behalf without prior consultation. Also according to this Agreement and following a request by Jersey authorities, the UK may arrange for its ratification of any Convention to be extended to Jersey. A Ministry for External Relations was created in 2013 and there is a designated Minister for External Relations. Ministerial responsibility for external relations of Jersey rests jointly with the Chief Minister and the Minister for External Relations. The Law Officers' Department is the central authority for requests for mutual legal assistance.

25. The status of extension of international conventions to Jersey is set out below:

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention)	Extended to Jersey in 1997
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⁶ Based on data reported annually to the Commission: 75,000 entities administered of which estimated 1:2 ratio of trusts to companies.

⁷ "Financial services" in these statistics refers to the activities of banks, fund managers, trust & company administrators, legal and accountancy firms operating in Jersey and exclude firms predominantly engaged in insurance and financial advisory services.

⁸

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Financial%20Institutions%20Report%202014%2020150630%20SU.pdf>

The United Nations Convention against Transnational Organized Crime, 2000 (Palermo Convention)	Extended to Jersey on 17 December 2014
UN Convention against Corruption, 2003 (Merida Convention)	Extended to Jersey in 2009
The International Convention for the Suppression of the Financing of Terrorism, 1999 (Terrorist Financing Convention)	Extended to Jersey in 2008
Convention for the Suppression of Unlawful Seizure of Aircraft	Extended to Jersey in 1971
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Extended to Jersey in 1973
UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	Extended to Jersey in May 1979
Vienna Convention on the Physical Protection of Nuclear Material	Extended to Jersey in 1991
International Convention against the Taking of Hostages	Extended to Jersey in 1982
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation	Extended to Jersey on 3 September 2013 ⁹
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	Extended to Jersey in October 2014
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf	Extended to Jersey in 2014 ¹⁰
International Convention for the Suppression of Terrorist Bombings	Extended to Jersey in May 2013
OECD and the Council of Europe's Multilateral Convention on Mutual Administrative Assistance in Tax Matters	Extended to Jersey in June 2014 (entry into force)
OECD Convention on Combating of Bribery of Foreign Public Officials in International Business Transactions	Extended to Jersey in 2010
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990 (Strasbourg Convention)	Extended to Jersey in 2015 ¹¹ Period covered: 1/5/2015 –
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 2005 (Warsaw Convention)	Extended to Jersey in 2015 ¹² Period covered: 1/8/2015 –
Council of Europe Convention on Mutual Assistance	Extended to Jersey in 2008

9

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420123/25_Prot_Supp_Unlawful_Vio_Airports_Montreal_24_2_1988.pdf

10

<http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202015.pdf>

The United Kingdom declared its ratification to be effective in respect of Jersey from 17 October 2014.

11

Declaration transmitted by a letter from the Permanent Representative of the United Kingdom, dated 6 January 2015, registered at the Secretariat General on 9 January 2015 - Or. Engl. The Government of the United Kingdom of Great Britain and Northern Ireland declares that, in accordance with Article 38 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the United Kingdom's ratification of the Convention shall be extended to the territory of the Bailiwick of Jersey, for whose international relations the United Kingdom is responsible. Period covered: 1/5/2015 –

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=141&CM=8&DF=18/05/2015&CL=ENG&VL=1>

12

Declaration contained in the instrument of ratification deposited on 27 April 2015 – Or. Engl. The Government of the United Kingdom of Great Britain and Northern Ireland ratifies the Convention in respect of the United Kingdom of Great Britain and Northern Ireland and of the Bailiwick of Jersey. Period covered: 1/8/2015 –

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=198&CM=8&DF=18/05/2015&CL=ENG&VL=1>

Council of Europe Criminal Law Convention on Corruption, 1999	Extended to Jersey in October 2013
Council of Europe Convention on Cybercrime, 2001	Not yet extended to Jersey

26. The relationship between the European Union and Jersey is governed by Protocol 3 to the UK's Treaty of Accession signed in 1972, according to which Jersey is neither a Member State nor an Associate Member of the European Union, but it is, however, part of the Customs Union of the EU. The common customs tariff, levies and other agricultural import measures therefore apply to the trade between the Island and non-Member States and between the Island and Member States the free movement of goods and trade applies. "Channel Islanders" are European Union citizens, but not entitled to take advantage of the freedom of movement of people or services. A "Channel Islander" is a person who holds British citizenship by virtue of being born, adopted, naturalised or registered in Jersey (or Guernsey) or by virtue of a parent or grandparent, being so born, adopted, naturalised or registered. If a person, his or her parent or grandparent was born, adopted, naturalised or registered in the UK or if he or she has at any time been ordinarily resident in the UK for 5 years, he or she shall not be regarded as a "Channel Islander" for the purposes of Protocol 3 and may benefit from the Community provisions on free movement of persons and services. Furthermore, Jersey is not part of the single market in financial services. Jersey and Guernsey jointly opened an office in Brussels in 2010 to promote their common interests with European Union institutions.
27. By virtue of a footnote included in the list of third countries that are currently considered as having equivalent AML/CFT systems to the European Union ("EU") (published under the Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC), Jersey may be considered as "equivalent" by Member States of the EU.
28. Jersey has signed bilateral agreements with all EU member States implementing measures equivalent to the EU Savings Tax Directive.¹³ On 29 January 2014 the Taxation (Agreements with European Union Member States) (Amendment No.2) (Jersey) Regulations 2014 came into force, which withdrew the previous possibility to choose between disclosing details of interest income to the Jersey tax authorities or to paying retention tax on the interest at 35%, and paying agents (as defined by the EU Savings Tax Directive) must now disclose to the Jersey tax authorities interest payments made to EU resident individuals on or after 1 January 2015. Under bilateral agreements made with all European Union countries, the Jersey tax authorities will pass the information to the tax authority in the client's EU home state. At the time of the on-site visit, Jersey had signed 36 Tax Information Exchange Agreements and eight double tax agreements.¹⁴

g. Transparency, good governance, ethics and measures against corruption

29. The 2009 IMF report noted that standards of governance and transparency appeared to be high. The United Nations Convention against Corruption and the OECD's Convention on Combatting Bribery of Foreign Public Officials in International Transactions were extended to include Jersey in 2009. The Council of Europe's Criminal Law Convention on Corruption was extended to Jersey in 2013.
30. The Corruption (Jersey) Law 2006 came into force in March 2007. It includes three main offences- corruption concerning a public body (Article 5), corrupt transactions with agents (Article 6), corruption by a public official (Article 7), and the penalties for each offence are up to 10 years imprisonment and a fine. The UK's enactment of the Bribery Act 2010, which came into

¹³ <http://www.gov.je/TaxesMoney/InternationalTaxAgreements/EUSD/Pages/index.aspx>

¹⁴ See updated list at: <https://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20TIEAsSignedToDate.pdf>

force on 1 July 2011, has inevitable implications for many individuals in Jersey, by virtue of their nationality, as well as for commercial organisations in Jersey which carry on part of their business in the UK, who will be subject to both Jersey and UK Statutes.

31. Jersey is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the “Global Forum”). The findings of the review were published in October 2011, which concluded that domestic laws provide a satisfactory framework for the exchange of relevant information and that the Island fully met the Global Forum’s standard in six of the nine areas under review. 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. Since the date of that review, the Taxation (Accounting Records) (Jersey) Regulations 2013 have come into force, which were aimed at addressing the recommendation of the Global Forum in relation to availability of information in respect of accounting records. Jersey has been subject to a Supplementary Peer Review by the Global Forum and its report was published on 4 August 2014 (covering the period 2010 - 2012).
32. To coincide with the G8’s action to enhance transparency on beneficial ownership of companies, Jersey has published its own action plan¹⁵ on 17 June 2013. Jersey has committed to undertake a general review of corporate transparency, having regard for the development of international standards and their global application. In furtherance of this commitment, Jersey published a pre-consultation paper early in 2014. This paper was followed by a consultation paper entitled “Review of transparency of beneficial ownership of companies” which was published on 2 February 2014 and consultation closed on 30 April 2014. At the time of the on-site visit the Government was considering the submissions received during that consultation and is considering the approaches being adopted by the UK and other G8 and G20 countries.

1.2 General Situation of Money Laundering and Financing of Terrorism

Money laundering

33. Jersey is in general a low crime environment. Since the IMF evaluation in 2008, it has experienced a reduction in reported crime of 31%. The number of recorded offences in the years 2010-2014 are set out in the table below:

	2010	2011	2012	2013	2014
Participation in an organized criminal group and racketeering	0	0	0	0	0
Terrorism, including terrorist financing	0	0	0	0	1
Trafficking in human beings and migrant smuggling	0	0	0	0	0
Sexual exploitation, including sexual exploitation of children	14	8	13	5	11
Illicit trafficking in narcotic drugs and psychotropic substances	177	177	233	170	123
Illicit arms trafficking	0	0	0	0	0
Illicit trafficking in stolen and other goods	0	0	0	0	0
Corruption and bribery	0	0	0	0	0
Fraud	54	34	56	44	31

¹⁵

<http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Jersey%20Action%20Plan%20To%20Prevent%20The%20Misuse%20Of%20Legal%20Persons%20And%20Legal%20Arrangements%2020130618%20AM.pdf>

	2010	2011	2012	2013	2014
Counterfeiting currency	0	0	0	0	0
Counterfeiting and piracy of products	0	0	0	0	0
Environmental crime	0	0	0	0	0
Murder, grievous bodily injury	137	145	161	160	149
Kidnapping, illegal restraint and hostage-taking	0	0	0	0	0
Robbery or theft	1,893	1,688	1,539	1,212	1,049
Smuggling	446	922	918	940	1,758 ¹⁶
Extortion	0	0	0	0	0
Forgery	0	0	0	0	0
Piracy	0	0	0	0	0
Insider trading and market manipulation	0	0	0	0	0
Other: Please Specify - Social Security Fraud ¹⁷	0	155	140	97	135
TOTAL	2,721	3,129	3,060	2,628	3,257

34. When examining the main ML risks, methods, typologies and trends, there is a distinction between domestic and overseas generated funds laundered through the Island's financial institutions and DNFBPs.
35. Jersey is a well-established international financial centre dominated by banking, fund administration and TCSP business. Considering its close ties to the UK, the advantages of a stable currency and well established global connections; the authorities indicated that institutions are exposed to a wide variety of business structures that raise Jersey's risk exposure profile across a number of geographic areas. Traditionally, the UK provided opportunities for the Island's financial services sector, however, changes to taxation legislation and anti-avoidance legislation introduced over the years have, in their view, lessened opportunities for new business from this jurisdiction and together with the effect of the prevailing economic climate has resulted in an increasing tendency of relevant persons to seek business in new markets.
36. ML risk arising from very low and falling domestic crime rates is generally not considered as high. Domestically, illegal drugs command high prices relative to other jurisdictions, making it attractive for criminals to meet local demand and this remains a concern for the authorities. The drugs market is linked mainly to the United Kingdom with the proceeds returning to the UK via couriers, wire transfers, or funds paid directly into UK accounts. The drugs market has changed significantly in recent years, with organised crime groups now profiting from the trend towards new psychoactive substance, and the law enforcement authorities have devoted considerable resources to countering drug importation and related crime. The volume of suspicious activity reports ("SARs") filed with the Joint Financial Crimes Unit ("JFCU") regarding drug crime has fallen from 10% in 2008 to an average of 5.3% over the last 5 years.
37. As noted in the IMF report, the nature of the financial sector business conducted in or from Jersey creates a material vulnerability to being used in the layering and integration stages of money laundering schemes.

¹⁶ Spike due to a revenue risk testing exercise on tobacco.

¹⁷ Social Security Fraud statistics only available from 2011.

38. Some aspects of Jersey's financial system, in common with that of other international finance Centres, may increase the risk of ML/TF:
 - a) A substantial proportion of customer relationships and of financial services business conducted is for non-residents of Jersey¹⁸;
 - b) The business relationship is in many cases established and conducted through third parties or intermediaries, subject to certain legal requirements (which are discussed in detail in this report);
 - c) The prevalence of complex structures involving the use of legal persons and arrangements, is attractive to launderers and increases the risks for abuse;
 - d) Its global presence, together with its attractiveness as an international financial and professional centre raises its risk exposure profile across a number of geographic areas which professionals need to understand in terms of the different AML/CFT risks posed.
39. The authorities have indicated, based on a survey that they've conducted, that reliance provisions have been applied to less than 13% of the customer base. 99% of third parties relied upon are in the Crown Dependencies or other jurisdictions considered by the Commission to apply equivalent AML/CFT standards; simplified identification measures have been applied to only 1% of customers; and 99% of the customers to which simplified identification measures have been applied are in the Crown Dependencies or other jurisdictions considered by the Commission to apply equivalent AML/CFT standards.
40. While traditionally many of the customers in Jersey originated from the United Kingdom, the public information available indicates a growing trend by the industry in recent years to target the African, Middle Eastern, Russian/Commonwealth of Independent States and Asian markets. The expansion of business to these geographical areas presents new challenges to the industry and to the supervisor in terms of risk, particularly as far as politically exposed persons (PEPs) are concerned and exposure to the vulnerability, inherent within certain regions, of the financing of terrorism.
41. As was already mentioned above, international business in Jersey often may involve the setting up of a range of complex corporate structures, which can involve different layers of entities situated in multiple jurisdictions, cross border transactions involving counterparties spread across different parts of the world, use of intermediaries, etc. The business undertaken in Jersey often contains one or more features, each of which individually is classified by the Financial Action Task Force (FATF) as potentially high risk. Multiple combinations of such features, associated with international banking business, may in some cases result in an overarching risk beyond a level capable of being effectively mitigated. The authorities stressed however that they have not come across evidence of such cases in Jersey and that they remain very much aware of the risks and monitor it accordingly.
42. The authorities pointed out that the characteristics of these structures have resulted in an enhanced focus on transparency by the jurisdiction, in order to be able to correctly assess the risks and apply adequate measures. Therefore, the jurisdiction expects each stakeholder to have an adequate knowledge of the risks particularly associated with its business.
43. ML in Jersey generally involves proceeds generated outside Jersey, with the most common grounds for suspicion being tax related offences. A number of money laundering techniques have been identified by law enforcement as presenting the highest level of risk for both domestic and foreign predicate offences.

¹⁸ Figures published by the JFSC show the proportion of bank deposits by Jersey residents in March 2014 was 7.1% of the overall total and although there was no similar geographical analysis of fund investors (as with banking deposits) the JFSC's estimate was that the majority of investors in Jersey administered and managed funds are non-resident.

44. Further information in respect of money laundering trends and typologies can be found in the two reports issued in Jersey on this issue in 2008¹⁹ and respectively in January 2015²⁰. The latest Trends and Typologies Report notes that the vast majority of products and services and legal persons and arrangements are used for legitimate purposes and, at the time of the report, intelligence suggested that only a small minority were used to launder the proceeds of criminal activity or finance terrorism.
45. The 2015 report issued by the Jersey Financial Crime Strategy Group highlights a number of Jersey specific typologies. The authorities indicated that the highest proportion of SARs is tax-related, often linked to the operation of amnesties in foreign jurisdictions as individuals seek to regularise their tax affairs, and frequently personal accounts of low value. An increase in relevant persons seeking to exit relationships has been noted. A smaller but significant component of SARs relates to the proceeds of foreign fraud and corruption, including PEPs (non-resident).
46. Other risks identified by the authorities include:
 - Abuse of trusts, including use of dummy settlors and false or pseudo beneficiaries;
 - Exertion of undue influence by relatively large clients over directors of service providers;
 - The use of complex multi-jurisdictional structures of corporate entities and/or trusts of which a local institution is only one small part;
 - Abuse of position with relevant persons fraudulently converting small sums and exploiting dormant accounts;
 - Local drug dealers utilising bank accounts and wire transfers to move money from Jersey to the UK (individually small funds but combining to significant funds) to purchase drugs;
 - Use of pre-paid travel cards to launder funds from domestic illicit drugs activity overseas.

Risks and vulnerabilities of misuse of legal persons and arrangements

47. The Jersey authorities consider that, on the basis of the net risk after application of Registry controls and TCB supervision, there is a lower risk that Jersey legal persons and trusts administered in, or from within, Jersey will be used in money laundering and the financing of terrorism. The potential risks of trust structures in general and specifically of discretionary trusts are recognised by the authorities, although they are of the view that these risks are adequately mitigated and managed.
48. In Jersey, most legal persons are formed on behalf of non-residents by regulated TCBs licensed to carry out company formation activity (Class F). Therefore, the authorities have ruled out the possibility of placing reliance on legal persons themselves to obtain and hold up to date information on beneficial ownership, as this requirement could be difficult to enforce extraterritorially and legal persons involved may not have the necessary skills and experience to understand ownership in complex structures.
49. Jersey has taken measures to address risks arising from the potential misuse of legal persons and arrangements by introducing a system which:
 - 1) ensures that the Companies registry is a “gate-keeper” at the time that companies, limited partnerships, limited liability partnerships, separate limited partnerships, and incorporated limited partnerships are registered (and on a continuing basis in any case where a company

¹⁹ *Typologies from a Jersey perspective* (28 October 2008) at <https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/R%20AML%20CFT%20typologies%20from%20a%20Jersey%20perspective%202008%2020150105%20LB.pdf>

²⁰ *Report by the Jersey Financial Crimes Strategy Group* at <http://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/R%20Money%20laundering%20typologies%20and%20trends%20Jersey%2020150115%20LB.pdf>

- or partnership is not administered by a TCSP) – whereby it collects and holds beneficial ownership information provided at the time of incorporation;
- 2) requires TCSPs to collect and hold accurate and up to date information on beneficial ownerships and checks that TCSP comply with these requirements.
50. The courts have dealt with a number of cases which are illustrative of how trusts may be used in money laundering. As an example, in a Court of Appeal decision²¹ which was an action for recovery of assets held by a Jersey trust claimed as being the traceable proceeds of bribes, secret commissions or other fraudulent payments received by Maluf family members in Sao Paulo, Brazil. Three letters of wishes were issued by the settlor there which the court found in itself not to be unusual, nevertheless the third letter of wishes, instructing a beneficiary change from the children back to settlor, absent any other explanation, and taken along with a bank transfer made, was found by the court on its face to be unusual and cogent evidence establishing Maluf as a party to the fraud and the beneficial ownership of the bank account there. In this case, the courts actually identified the fraud in litigation and had frozen the relevant assets.
51. Another example may be the abuse of a discretionary trust where through the trust documents (e.g. letter of wishes) the settlor de facto enjoys the use of the trust assets (e.g. for as long as he lives). Such a case occurred in the *Tantular case*²², in which the settlor of a Jersey trust (who was convicted of banking offences and sentenced to nine years' imprisonment in Indonesia) of which the beneficiaries were listed as the settlor, his wife, his three children and his wife's younger sister. In a letter of wishes the settlor expressed the hope that during his lifetime the trustee would consider him - the settlor - as the principal beneficiary. When charged with fraud and money laundering offences, the Jersey Royal Court refused to grant a saisie judiciaire whereas the court held that the settlor, though a beneficiary of a discretionary trust, is not to be considered 'beneficially entitled' for the purposes of confiscation, and that the court may not grant a saisie judiciaire over the assets of a discretionary trust merely on the ground that the offender (or suspected offender) is a beneficiary of such a trust, thus ignoring the letter of wishes which de facto named the settlor the principal beneficiary during his lifetime.
52. Another potential risk arises from arrangements whereby the trustees recognise that the assets remain de facto the settlor's in all but name (sham trusts). The authorities assured that no reputable trustee or trust managing company would be part of such an arrangement, which is illegal. The Jersey courts case law punishes such situations and trustees can find themselves not only subject to tax penalties, but also sanctionable by the financial regulator and could see their licence revoked, with key persons possibly facing fines or criminal sanctions, including prison.
53. As regards foundations, the judgment *Dalemont v Senatorov and others (2012] JRC 061A* is the first case in which the foundation regime has been subject to judicial scrutiny. The court considered in this case that the foundation had been organised in such a way as to be unable to comply with an order of the Royal Court, and that this "made it very difficult to prevent the underlying structures from being used for money laundering or indeed any other criminal purposes". An amendment to the Foundations Law enacted within the two month period of the onsite visit requires each member of the council of a foundation to take reasonable steps to ensure that the foundation's records are prepared and kept properly and accurately and that, in particular, they contain entries of all sums of money received and expended by the foundation, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the foundation, including shares, interests and units held by the foundation in any other legal person or arrangement.

²¹ (11 April 2013) *The Federal Republic of Brazil and others v Durant International Corporation and others* [2013]JCA071

²² Tan chi fang and others against HM AG (June 2014) in the matter of the realisable property of Robert Tantular.

54. The Island's ML and FT strategy seeks to address identified vulnerabilities, pending the completion of a full National Risk Assessment which is expected to provide a more comprehensive understanding of the different risks at both an Island and institutional level. The strategy specifies raising awareness of obligations set out in legislation and codes of practice in sectors considered to have lower awareness, providing typologies highlighting the risks arising from the nature of the customer base and products associated with Jersey, and emphasising the importance of considering issues involved in dealing with higher risk jurisdictions.
55. The money laundering offence under the Proceeds of Crime Law extends to the proceeds of all criminal conduct (covers all crimes with a punishment of more than one year's imprisonment). Seven persons have been convicted for ML offences in the years 2010-2014, the majority of cases involving third party money laundering, with the predicate offence being drug trafficking.

Financing of Terrorism

56. The main issues regarding ML are mirrored in FT, with Jersey's vulnerability arising from its global connections rather than local criminal/terrorist activity.
57. Since 2010, 77 SARs related to TF were reported to the FIU, mainly by banks or TCSPs. The SARs disclosed under terrorism legislation generally related to the disclosing institution having conducted customer due diligence ("CDD") measures and identifying a possibly link between their client and a terrorist organisation or a jurisdiction linked to State-sponsored terrorism. There have been no prosecutions or convictions for TF in the assessed period. In one case in 2013, transactions were frozen under UNSCR 1333 (2000) by a fund administrator and the case was notified to the authorities, the individual had however been already delisted in 2012.
58. One prosecution was on-going at the time of the evaluation visit, regarding the possession and publication of prohibited material. This prosecution has concluded with the defendant being sentenced by the Royal Court to 18 months' probation. The defendant had pleaded guilty to contravening Article 57 of the Terrorism (Jersey) Law 2002 and the court found that his behaviour was as a result of his autistic spectrum disorder, accepting that he was not radicalised. A thorough parallel financial investigation was carried out in this case but there was no terrorist financing activity in this particular case.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

General overview of the Jersey financial sector

59. The table below provides an update of the number of financial institutions operating in Jersey in the years 2010-2014 :

	2010	2011	2012	2013	2014
Banks	46	40	42	42	33
Securities (Funds)²³	1,324	1,392	1,388	1,334	1,323
Insurance (Long Term and Composite Insurers)²⁴	71	75	71	70	69 ²⁵

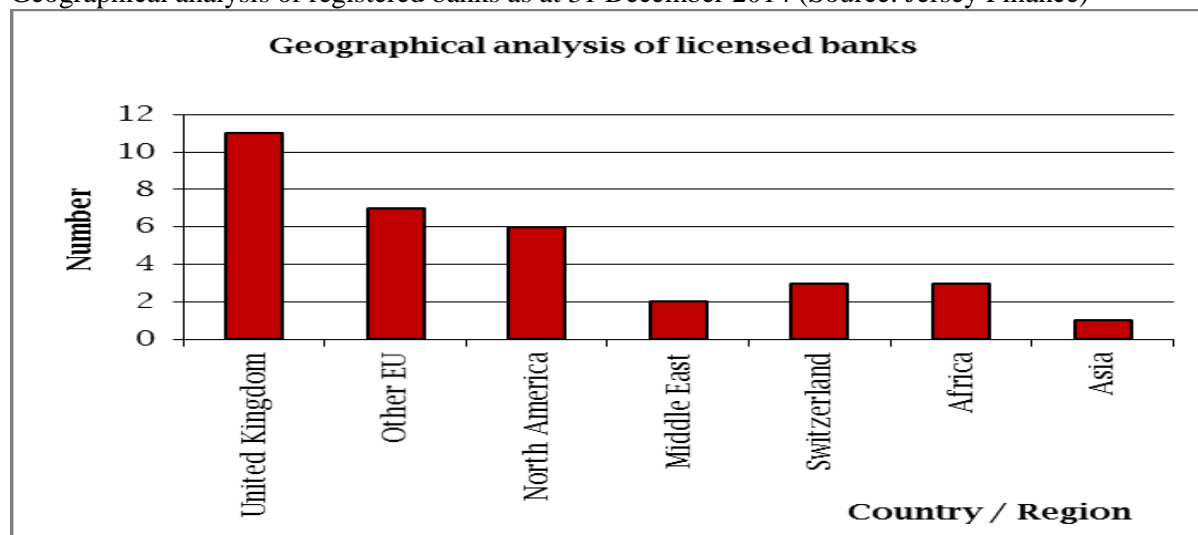
²³ Funds include Jersey Collective Investment Funds, non-Jersey domiciled Funds and Control of Borrowing Order authorised Funds. Funds comprised a total of 2,176 Pools of Assets as at 31 December 2014. 'Unregulated Funds' have not been included in the figures quoted above (of which there were 123 as at 31 December 2014)

	2010	2011	2012	2013	2014
MSBs and exchange offices	5	5	5	6	6
Other (MSBs Notification under Article 4 of the MSB Exemptions Order)²⁶	14	17	17	17	15 ²⁷
Other (MSBs Notification under Article 5 of the MSB Exemptions Order)²⁸ (matches Banking line)	46	40	42	42	33
Securities (Fund Service Business)	464	459	466	463	485 ²⁹
Securities (Investment Business)	105	100	97	95	90

Banks

60. The number of banks registered in Jersey dropped from 42 in December 2013 to 33 as at 31 December 2014. All banks are part of international groups within the top 500 banks worldwide measured by tier 1 capital. The geographical analysis of registered banks (based on the jurisdiction of the ultimate parent company) and the ownership structure are as follows:

Geographical analysis of registered banks as at 31 December 2014 (Source: Jersey Finance)



²⁴ The total number of Insurance entities carrying on long term insurance comprise either Category A permit holders that are already regulated elsewhere (the majority in the UK, rest of EU and UK Crown Dependencies) where Jersey is the host regulator or Category B permit holders that are Jersey incorporated companies where Jersey Financial Services Commission is the home regulator. Category A permit holders almost entirely obtain business via Jersey registered investment businesses on a cross-border basis with very few having a branch office in Jersey. At present only 3 Category A permit holders have a branch office in Jersey and 3 Category B permit holders carry on long term insurance.

²⁵ There were 180 regulated insurance companies registered with the Commission at the end of 2014 of which only 69 were subject to AML/CFT supervision. The remainder of insurance businesses carry on general insurance business which is exempt from AML/CFT Supervision.

²⁶ Article 4 of the Financial Services (Money Service Business) (Exemptions) Jersey Order 2007 (MSB Exemptions Order) – exemption from licensing if turnover is less than specified amount. Supervision and enforcement powers continue to be available to the Commission.

²⁷ Subsequent to 31 December 2014, the number of financial institutions notifying under Article 4 of the MSB Exemptions Order has fallen from 15 to 9.

²⁸ Article 5 of the MSB Exemptions Order – exemption from licensing for person regulated under Banking Business Law.

²⁹ Of which 336 financial institutions are managed entities where the managed entity relies on its manager to provide a range of management services typically including the registered office, directors, compliance function and policies and procedures for the managed entities.

Ownership structure of commercial banks in 2013							
	2008	2009	2010	2011	2012	2013	2014
Foreign ownership more than 50%	23	23	20	15	14	14	10
Foreign ownership less than 50%							
Resident Shareholders 100%							
Foreign Branches	24	24	25	25	28	28	23
Total number of banks	47	47	45	40	42	42	33

61. Jersey's banking sector is characterised by a significant presence of foreign investments and in general of foreign relationships. The table below shows that more than half of the deposits in Jersey's banks are of foreign origin, the highest proportion of those being from the UK, Guernsey and the Isle of Man, followed by Middle East countries. Jersey banks undertake a range of other activities for their customers, auxiliary to the Island's wealth management and fiduciary industries, primarily broking and trading, custodian services and discretionary management.

Analysis of deposits in Jersey banks (as of December 2014)

Residence of Depositors	Total	Percentage of Total
Jersey Resident Depositors	8,841,284	6.7%
Jersey Financial Intermediaries etc	13,281,306	10.0%
U.K., Guernsey & Isle of Man + unallocated Jersey, UK etc	40,383,412	30.5%
SUBTOTAL	62,506,002	47.2%
Other EU Members	12,454,244	9.4%
European Non EU Members	16,133,080	12.2%
Middle East	19,518,160	14.7%
Far East	5,534,190	4.2%
North America	4,744,035	3.6%
Others, Unallocated non Jersey, UK etc	11,553,589	8.7%
SUBTOTAL	69,907,298	52.8%
OVERALL TOTAL OF DEPOSITS	132,413,300	100%

Note: All amounts in £ thousands

Fund Services Businesses

62. The investment funds business is highly developed in Jersey as reflected by the number of funds, as well as the value of investments. Jersey is a centre for the administration, and to a lesser extent, management of investment funds. According to the official statistics of 2011, the Island's

fund industry employed 460 people, turned over £170 million and generated £80 million of added value. Jersey funds take the form of a Jersey incorporated company, a Jersey law unit trust, or a Jersey registered limited partnership. Many of the funds are operated on a “fully administered basis” by fund administration groups established in Jersey. The table below presents the types of funds available in Jersey, the legislation under which they are regulated, as well as the type of supervision they are subject to.

Regulated funds	Collective Investment Funds (Jersey) Law 1988, as amended, and the Collective Investment Funds (Certified Funds-Prospectuses) (Jersey) Order 2012	Open-ended Collective Investment Funds (offered to the general public)³⁰	<ul style="list-style-type: none"> – are offered to over 50 investors or are listed and do not fall within the simplified regulatory regimes as provided for the Expert Funds or Listed Funds in the relevant Guide – must have a Jersey based manager and, for open-ended funds, a Jersey based custodian 	<p>The fund itself (in the case of a corporate fund) or the general partner (in the case of a limited partnership) or the trustee (in the case of a unit trust) will be required to obtain a certificate in relation to the fund from the JFSC under the Collective Investment Funds Law and must comply with the Certified Funds Codes, as well as any bespoke conditions set out in its certificate.</p> <p>Fund service providers are also required to be registered under the Financial Services Law.</p> <p>Both the fund (under the Collective Investment Funds Law) and the fund service providers (under the Financial Services Law) will be subject to on-going supervision by the JFSC.</p>
		Expert Funds³⁰	<ul style="list-style-type: none"> – are offered to over 50 investors or are listed – can be closed or open-ended and can be offered to an unlimited number of investors, providing all such investors qualify as "expert investors" (include institutional and sophisticated investors or any person investing at least US\$100,000 (or its currency equivalent)) – must have at least two Jersey resident directors: <ul style="list-style-type: none"> ○ for corporations, ○ for the trustee (for unit trusts) or ○ for the general partner (for limited partnerships). and – a Jersey based fund service provider to monitor the fund/investment 	

³⁰ Open-ended Collective Investment Funds, Expert Funds and Listed Funds are all types of Unclassified Fund, which is defined in Article 1 of the Collective Investment Funds (Jersey) Law 1988.

			manager in line with the Expert Fund Guide	
		Listed Funds³⁰	<ul style="list-style-type: none"> – are offered to over 50 investors or are listed – the units of the fund are listed on a Recognised Stock Exchange or Market – must take the form of a closed-ended company – must have at least two Jersey resident directors and a Jersey based fund service provider to monitor the fund/investment manager in line with the Listed Fund Guide 	
	Collective Investment Funds (Jersey) Law 1988, as amended, and the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003, as amended	Recognized Funds	<ul style="list-style-type: none"> – are offered to over 50 investors or are listed – most highly regulated funds in Jersey with investors having access to a statutory compensation scheme and they may be marketed freely to the public in the UK under the Financial Services and Markets Act 2000 (section 272) – Recognized Funds may take the form of an open-ended company or unit trust only. 	<p>The fund itself (in the case of a corporate fund) or the trustee (in the case of a unit trust) will be required to obtain a permit in relation to the fund from the JFSC under the Collective Investment Funds Law.</p> <p>The fund functionaries are also required to obtain permits from the JFSC under the Collective Investment Funds Law and must comply with the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988, as amended.</p> <p>Both the fund and the fund functionary will be subject to on-going supervision by the JFSC.</p>
Less regulated funds	Control of Borrowing (Jersey) Order 1958	Very Private Funds	<ul style="list-style-type: none"> – established for a small group of co-investors (not exceeding 15 in number) or for a single purpose – there is no general offer of units 	<p>Prior consent is required for the establishment of the fund.</p> <p>The company, trustee or general partner of the fund will be subject to on-going supervision by the JFSC.</p>

		Private “COBO” Funds	<ul style="list-style-type: none"> – funds which are offered to not more than 50 investors and are not listed on a stock exchange – must have at least two Jersey resident directors: <ul style="list-style-type: none"> ○ for corporations, ○ for the trustee (for unit trusts) or ○ for the general partner (for limited partnerships). 	<p>Prior consent is required for establishment of the fund. The JFSC reviews the promoter and any offer document.</p> <p>The company, trustee or general partner of the fund will be subject to on-going supervision by the JFSC.</p>
		Private Placement Funds	<ul style="list-style-type: none"> – a closed-ended investment fund established or managed in Jersey, participation in which is offered to not more than 50 potential investors each of whom is a Professional Investor, a Sophisticated Investor or an investment manager – must have at least two Jersey resident directors: <ul style="list-style-type: none"> ○ for corporations, ○ for the trustee (for unit trusts) or ○ for the general partner (for limited partnerships). 	<p>Prior consent is required for establishment of the fund. The JFSC reviews the promoter and any offer document.</p> <p>The company, trustee or general partner of the fund will be subject to on-going supervision by the JFSC.</p>
“Unregulated funds” (but still regulated for AML/CFT purposes)	Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008	Eligible Investor Funds	<ul style="list-style-type: none"> – funds in which only eligible investors (an investor who makes a minimum initial investment of US\$1 million or the currency equivalent or an institutional or professional investor) may invest 	<p>Required to notify their establishment to the JFSC and a public list is available from the Registry section of the Commission website³¹.</p> <p>Both the fund and the fund service provider will be subject to on-going supervision by the JFSC.</p>
		Exchange Traded Funds	<ul style="list-style-type: none"> – a closed-ended fund and which is listed or to be 	

³¹ <https://www.jerseyfsc.org/registry/documentsearch/UnregulatedSearch.aspx>

			listed on one or more prescribed exchanges and markets	
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63. In addition to registering and supervising those persons that provide services to collective investment funds, the Commission also issues certificates/permits and supervises the Jersey collective investment fund product when it meets the criteria of the Collective Investment Funds Law. The criteria for issuing a certificate/permit are that the collective investment fund is: a company established under Jersey law or has a place of business in Jersey; a unit trust whose proper law is Jersey or is managed from within Jersey; or a limited partnership established under Jersey law and which is managed from within Jersey.

64. As at 31 December 2014, the position was as follows:

Type of collective investment fund ³²	Total net asset value (£ million)	No. of Funds	No. of separate of pools
Closed-ended	107,022	529	672
Open-ended	113,844	605	1,315
Total	220,866	1,134	1,987
<i>(Jersey collective investment funds issued with a certificate/permit under the Collective Investment Funds Law)</i>	<i>99,175</i>	<i>693</i>	<i>1,395</i>

65. Where the Alternative Investment Fund Managers Directive (AIFMD) is applicable to the activities of a Jersey alternative investment fund manager, a Jersey alternative investment fund, or a Jersey alternative investment fund depositary, Jersey has taken measures to implement the necessary regulatory infrastructure in order to comply with AIFMD. In this regard, the Jersey regulatory requirements implement the AIFMD requirements for private placement to EEA investors and in the event of a passport being available, or for those Jersey AIF Managers who wish to be fully compliant earlier, the EEA AIFMD passport requirements.

Money service businesses

66. The definition of “money service business” in the Financial Services Law covers bureau de change activities, cheque cashing services, and money transmission. The bureau de change market is dominated by the major clearing banks, Jersey Post, one larger retailer and two travel agents. Money transmission is dominated by licensed deposit-takers. Both Moneygram and Western Union had agencies in the Island at the time of the onsite visit, although the latter no longer operates. Jersey Post and, at the time of the onsite visit, one local business provide a cheque cashing facility to customers. Whilst no statistics are available on the size of the money service business sector in Jersey, the authorities indicated that non-bank activities are focused on the domestic market and are very modest.

Insurance

67. The Jersey insurance market consists of two types of actors. The first are persons who carry on general insurance mediation businesses according to the Financial Services (Jersey) Law 1998. These businesses mainly provide general insurance advice or mediate and arrange contracts with third persons. The others are insurance business providers, who are regulated according to the Insurance Business (Jersey) Law 1996. There were 180 regulated insurance companies registered with the Commission at the end of 2014 of which only 69 were subject to AML/CFT regulation and supervision. The remainder of the insurance businesses carry on general insurance business which is not subject to AML/CFT regulation and supervision.

³² Excludes Control of Borrowing Order authorised funds.

Designated Non-Financial Businesses and Professions (DNFBP)

68. The table below shows the number of DNFBPs operating in Jersey in the years 2010-2014 :

	2010	2011	2012	2013	2014
Casinos	0	0	0	0	0
Real estate	37	36	35	34	42
Dealers in precious metals and stones	0	0	0	0	0
Lawyers	39	38	41	45	48
Notaries	0	0	1	1	1
Accountants & auditors	72	79	90	94	95
Trust and Corporate Service Providers (TCBs)³³	140	135	142	135	126
TCBs – Natural Persons³⁴	29	35	38	49	60

69. *Casinos.* A legislative and regulatory framework is in place for the establishment of land based casinos, although there are currently no land based casinos in Jersey. There have been a number of legislative changes since the last assessment, in particular in 2010 the Jersey Gambling Commission was established and is now responsible for the supervision and licensing of gaming businesses. Furthermore, in January 2013, the new Gambling (Jersey) Law 2012 came into force, the aim of which was mainly to remove the administrative burden of several steps of registration and the numerous fees applicable, in order to facilitate and promote the industry on the Island. It introduces amongst other things also an explicit possibility to provide remote games of chance in the jurisdiction. At the time of the on-site visit, only one licence for “business to business” services had been issued with regard to remote gambling (<http://twelve40.com>)³⁵. There are efforts to promote remote gambling in Jersey and attract foreign companies³⁶.

70. *The professional services of accountancy and legal firms* providing support and advisory services to the finance industry employed in 2011 over 2700 workers on the Island, turned over £330 million and generated £100 million of profits.

71. *Legal professionals.* The Jersey legal profession has three types of qualified lawyers - Advocates, Solicitors and Public Notaries. Advocates have the rights to represent clients in all courts, whilst solicitors have no general rights of audience. The Law Society of Jersey is the professional body responsible for professional conduct. Notaries are regulated by the Faculty Office of the Archbishop of Canterbury through the Dean of the Arches, referred to as the Master of the Faculties, who is normally an English Queen’s Counsel. The admission of lawyers as Notaries in Jersey is governed by an order of the Master of the Faculties. It is necessary to show that a prospective Notary has been in actual practice in Jersey as a Jersey-qualified Advocate or Solicitor for a period of 5 years and is required to pass an examination in Notarial Practice. There is also a local Jersey Notaries Society.

³³ These figures include TCB groups (102 as at 31 December 2014). Within these groups there is a total of 687 ‘Participating Members’ as at 31 December 2014. Participating Members are companies that support the TCB groups.

³⁴ Natural persons acting or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company

³⁵ <http://www.jerseygamblingcommission.com/assets/uploads/List-of-Licencees-Permits-Approvals/JGC-List-of-Licencees-Permit-Holders-Approved-Testing-Houses-Endof2014.pdf>

³⁶ For example <http://www.thinkgaming.je/gaming-licensing>

72. *Jersey accountancy services* include offices of the large audit companies, as well as a range of smaller local firms and sole practitioners. Larger firms provide audit, tax, insolvency, and advisory services, with audit work for multi-national financial institutions representing a large share of their work. The Jersey Society of Chartered and Certified Accountants is a professional association representing the interests of its membership. There is no professional body of accountants established in Jersey that could issue its own code of ethics or set standards, certify qualifications, or discipline members. Many in the profession are members of the Institute of Chartered Accountants in England and Wales or similar professional bodies and come under the disciplinary framework of those bodies.
73. A significant proportion of the lawyers and (to a lesser extent) accountants provide ancillary services to the prudentially supervised financial services industry in the sphere of fund business, trust and company business, and other wealth-management services. Such services typically take the form of designing fund structures, providing legal advice and undertaking financial audits of supervised entities, as required by the regulatory laws.
74. *Trust and company service providers.* The Financial Services Law also regulates trust company businesses, which apart from the provision of the trustee or fiduciary services may also provide company administration services or services to foundations.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

75. The following legal persons (as defined by the FATF) may be created under Jersey law:
- a) Companies
 - b) Limited partnerships
 - c) Limited Liability partnerships
 - d) Foundations
 - e) Incorporated associations
76. Jersey legal entities are regulated by the Companies (Jersey) Law 1991 (the “**Companies Law**”³⁷), the Limited Partnership (Jersey) Law 1994 (the “**Limited Partnerships Law**”), the Limited Liability Partnerships (Jersey) Law 1997 (“**Limited Liability Partnerships Law**”), the **Separate Limited Partnerships (Jersey) Law 2011**, the **Incorporated Limited Partnerships (Jersey) Law 2011** and the **Foundations (Jersey) Law 2009**. In addition, the Control of Borrowing (Jersey) Law 1947 (the “**Control of Borrowing Law**”) and the Control of Borrowing (Jersey) Order 1958 (the “**COBO**”), the Proceeds of Crime Law and the Money Laundering Order are relevant for this section of this report.
77. Companies, foundations, separate limited partnerships, incorporated limited partnerships, limited liability partnerships, and incorporated associations all have a separate legal personality under Jersey law. Through its partners, a customary law partnership or limited partnership (through its general partner) may own immovable property (realty). However, neither have a separate legal personality under Jersey law.
78. All Jersey companies, limited partnerships, limited liability partnerships and foundations are registered by the Companies Registry.
79. The table below provides an overview of legal persons and arrangements, broken down per type of entity :

³⁷ As last amended by the Companies (Amendment no. 11) (Jersey) Law 2014, Companies (Exemptions) (Jersey) Order 2014 and Companies (Amendment) (Jersey) Order 2014 - the Amendment laws came into force on 1 August 2014. The Companies (Transfers of Shares - Exemptions) (Jersey) Order 2014 came into force on 25 September 2014 and extends the ability of Jersey companies to facilitate electronic holding and/or transfer of shares.

Breakdown of Legal Persons and Arrangements³⁸ as at 31 December 2014

Entity Type	Number	
Private Company	31,376	
Private Incorporated Cell Company	45	
Private Incorporated Cell	171	
Private Protected Cell Company	52	
Private Protected Cell	160	
Sub Total – Private Companies		31,804
Public Company	725	
Public Incorporated Cell Company	4	
Public Incorporated Cell	31	
Public Protected Cell Company	26	
Public Protected Cell	127	
Sub Total – Public Companies		913
Total Companies		32,717

Entity Type	Number	
Incorporated Limited Partnerships	18	
Separate Limited Partnerships	56	
Limited Liability Partnerships	27	
Limited Partnerships	1,232	
Total Partnerships		1,333

Companies and Partnerships

80. A company will be incorporated under the Companies (Jersey) Law 1991 (the “Companies Law”) and is recorded in a public register held by the Registrar of Companies (the “Registrar”). This records the company name, date of incorporation, legal form and status, and the address of the registered office. The following are also held by the Registrar and available to the public:

- By virtue of Article 7, the name and address of each founder and, with respect to public companies, the name, address, nationality, occupation and date of birth of each director at the time of incorporation.
- By virtue of Article 7, a copy of the company’s memorandum and articles of association (containing regulating powers);
- By virtue of Article 71, the name and address of registered shareholders on 1 January of each year; and
- By virtue of Article 71 (in the case of a public company, subsidiary of such a company, or company which is deemed to be a public company), the name, address, nationality, occupation and date of birth of every director on 1 January of each year.

81. Companies may be incorporated with limited or unlimited liability. They may be limited by shares or by guarantee. They may be ‘public’ companies or ‘private’ companies. They may issue shares with and without a “par” value.

82. The Companies Law, amongst other things, sets out how a company shall be formed, incorporated, and operated. It also sets accounting and auditing requirements and sets out the procedure for winding-up a company. The Companies Law also provides for investigations into

³⁸ Excluding general partnerships, foundations, customary law partnerships, trusts

the affairs of a company to be carried out in appropriate circumstances. All companies must prepare annual accounts in accordance with generally accepted accounting principles. Public companies must file those accounts with the Registrar (whereupon they may be inspected by a member of the general public).

83. The Commission keeps and publishes a list of sensitive activities, which as a matter of policy, are considered to pose reputational risks to Jersey. Any company wishing to engage in such activities is expected to seek permission of the Commission. This is detailed in the Sound Business Practice Policy of the JFSC (last issued in November 2014). In practice, the Commission, using its powers under the COBO, is able to refuse incorporation or can apply conditions to the incorporation or take other steps. Indeed, this has been a process that has been followed pre- SBPP coming into force – Registry previously monitored sensitive activity. This information is obtained through the incorporation application forms (C2A or C2B). The Commission collects this information using its powers under the COBO.

Cell companies

84. 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 (“PCCs”), Jersey also introduced a completely new concept – the incorporated cell company. They are both allowed under the Companies Law. 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.
85. A PCC 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.
86. In order to ensure that creditors and third parties are aware of this position, a director of a PCC is under a duty to ensure counterparties know or ought reasonably to know that the PCC is acting in respect of a particular cell (Article 127YR Companies Law). A director who fails to notify counterparties to a transaction that the PCC is acting in respect of a particular cell and to reflect this accurately in the minutes of the PCC or protected cell is guilty of an offence under Article 127YR(3) of the Companies Law and punishable with a fine. It should be stressed that a director of a cell does not have any duties or liabilities in respect of the cell company in relation to the cell or any other cell of the cell company by virtue of their directorship of a particular cell (Article 127YDA(5)) and, accordingly, is not entitled to any information in respect of the cell company or the cells to which he is not a director (Article 127YDA(6)).
87. 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.
88. 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.
89. 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 cell 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.
90. Article 2 of 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.
91. 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. In practice, it expressly asks for information on date of birth, occupation, address, and place of birth of shareholders. Guidance to completing the registry C2A application form³⁹ was last revised on 24 March 2015.
92. 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% of the shares of the cell, prior approval by the Commission will not be needed. Post incorporation, the Registry reviews the position on a case by case basis and a 25% threshold is generally applied.
93. 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).
94. The provision of a registered office service is covered in the trust company business sector specific section of the Handbook for Regulated Financial Services 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).
95. All records delivered to the Registrar (as distinct from the Commission) are accessible by the public, including online.

³⁹ 8.3: "Individual: in addition to the beneficial ownership and/or controller information collected in accordance with the requirements outlined in the AML/CFT Handbooks, the Commission (using its powers under the Order) applies a 10% threshold in respect of "ultimate beneficial owners". This policy should be viewed separately to the requirements outlined in the AML/CFT Handbooks. The Commission requires the details of any individuals with a 10% or more interest in the company to be completed in this section. The Commission's policy in relation to the provision of ultimate beneficial owner details was set, after consultation, prior to the introduction of the amended AML/CFT Codes of Practice in February 2008 and revised most recently in March 2015. The current position is that, inter alios, at the point of incorporation of a Jersey company, up front disclosure of ultimate beneficial owners holding a 10% or more interest is required."

96. 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. In addition, beneficial ownership information will also be provided to the Commission upon incorporation. 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. The FIU and Comptroller of Taxes may also access information using statutory powers.
97. As of 31 December 2014, there were 32,717 live companies registered in Jersey, of which 31,376 were private companies and 725 were public companies. 616 were cell companies.

Limited liability partnerships

98. In addition to companies established pursuant to the Companies Law, Jersey law allows for the registration of Limited Liability Partnerships pursuant to the Limited Liability Partnerships (Jersey) Law 1997 (the “Limited Liability Partnerships Law”) and of Limited Partnerships pursuant to the Limited Partnership (Jersey) Law 1994 (“Limited Partnerships Law”). Of these two types of partnerships, only the limited liability partnerships have legal personality, although limited partnerships are registered with the Registrar.

➤ Limited partnerships

99. Following the delivery of a declaration to the Registrar, a limited partnership will be registered under Article 4 of the Limited Partnerships Law and is recorded in a public register held by the Registrar. Inter alia, the declaration (which is available to the public) must state:
 - Its name;
 - The address of the registered office of the limited partnership; and
 - The full name and address of each general partner.
100. Under Article 5, if any change is made or occurs in any of the particulars delivered in the declaration (other than a change in the registered office of the partnership), the nature of the change must be notified to the Registrar within 21 days.
101. The Limited Partnerships Law, amongst other things, deals with all key matters during the lifecycle of a partnership from registration through to dissolution. Inter alia, it includes provisions dealing with the rights and obligations of the general partner(s) and liability of limited partners. 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.
102. The Limited Partnerships Law retains substantially the customary law of partnerships in Jersey but provides for a category of partner known as a ‘limited partner’. Limited partnerships are owned by their partners. Generally, management is by just one of the partners, known as the general partner. A limited partner’s liability is limited to the amount of his contribution to the partnership, provided he does not take part in the management of the partnership. A limited

partnership must have at least one general partner and one limited partner and must have a partnership agreement.

103. In 2011 two new forms were introduced by the Separate Limited Partnerships (Jersey) Law 2011 and the Incorporated Limited Partnerships (Jersey) Law 2011. The basic structure of the separate limited partnerships (SLP) and the incorporated limited partnerships (ILP) is very similar to the traditional limited partnership.
104. Save for certain key differences outlined below, the basic structure of an SLP and ILP is very similar to a limited partnership, and provisions outlined above apply. 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 the general partner. An ILP is also incorporated and has perpetual succession.

➤ Limited liability partnerships

105. Following the delivery of a declaration to the Registrar, a Limited liability partnership (LLP) will be registered under Article 16 of the Limited Liability Partnerships Law and is recorded in a public register held by the Registrar. Inter alia, the declaration (which is available to the public) must state:
- Its name;
 - The address of the registered office of the LLP; and
 - The full name and address of each partner (indicating which is to be a designated partner).
106. The Limited Liability Partnership Law deals, amongst other things, with all key matters during the lifecycle of an LLP from registration through to dissolution. Inter alia, it includes provisions relating to the relations of partners with one another and third parties and the liability of the LLP and partners and former partners. 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. LLPs are owned and managed by their partners. A LLP must have at least two partners.

Incorporated associations and fidéicomis

107. Whilst information is provided below on incorporated associations and trusts ('fidéicomis') of Jersey land, the former (approximately 240, some of which are known to be no longer active) are invariably used for non-profit/ charitable purposes, and use of the latter is not commonplace.
108. Incorporated associations are incorporated by an Act of the Royal Court pursuant to the **Loi (1862) sur les teneures en fidéicomis et l'incorporation d'associations** and recorded in a register held by the Judicial Greffe. The Loi (1862) sur les teneures en fidéicomis et l'incorporation d'associations provides for trusts of immovable property falling within 4 categories: i) those for objects of public utility, ii) those for commercial or industrial associations, benevolent and cultural and sporting associations, iii) those for the purpose of furthering the Anglican Church or any other religion, iv) those establishing schools and places of education. The procedure under the Loi (1862) sur les teneures en fidéicomis et l'incorporation d'associations for constituting such a trust ('fidéicomis') of land – which is the only way a trust of immovables can exist in Jersey law – is separate and distinct from the procedure under the same Loi for obtaining an Act of Incorporation of an association. An association may be incorporated under the same categories i) to iv) above as apply to the creation of trusts ('fidéicomis').

109. There are approximately 240 incorporated associations registered with the Judicial Greffe, of which all but four have a local focus – one of the four has a part local and part international focus being Durrell Wildlife Conservation Trust. The incorporated associations are established for a number of restricted purposes within Article 1 of the Loi (1862) sur les teneures en fidéicomis et l'incorporation d'associations but the vast majority (71%) can be classified as having a purpose of either social services, sport or community projects. The types of bodies included within these three categories include seven Bowls Clubs, ten local Football Clubs, Jersey Consumer Council, Jersey Sea Cadet Corps, National Trust for Jersey and the Jersey Battle of Flowers Association.
110. It should also be noted that the majority of the incorporated associations are also registered with the Commission as non-profit organisations under the Non-Profit Organizations (Jersey) Law 2008 and there is an obligation to notify the Judicial Greffe upon a change to the constitution or change of the name of the person charged to represent the incorporated association.

Incorporation of Associations

111. Although the Loi (1862) sur les teneures en fidéicomis et l'incorporation d'associations provides for associations to be incorporated for a wide range of uses- category (ii) for instance being wider than charitable purpose- in practice, associations now incorporated under the Loi are invariably for some non-profit/charitable purpose. The Royal Court has to approve the “object and rules” (i.e. constitution) of the association, and the conclusions of the Attorney General must be given to the Court on the application. Any later changes to the constitution require the consent of the Court, but Rules of Court allow this consent to be given by the Court's clerk, the Judicial Greffier, in Chambers. Again, such consent will only be given if the Attorney General has confirmed the changes are acceptable. The constitution (and changes thereto) remain lodged in the Judicial Greffe. The name of the officer(s) who under the association's constitution represents the association must be declared to the Judicial Greffe.

Creating a trust ('fidéicomis')

112. The documents which must be presented for creating a trust ('fidéicomis') of land are the trust instrument and contract intended to pass title to the immovable property, and the Attorney General must consider these documents and the object of the intended trust and offer his conclusions to the Court. If the Court's approval is given, the trust is duly constituted by the Act of Court. The Act and relevant deed(s) and contract(s) are then filed in the Public Registry (the Judicial Greffe) and available to the public to inspect. The names of any new trustees must be declared to the Court and likewise registered in the Public Registry.

Customary law partnerships

113. General partnership law in Jersey is a matter of customary law and is not governed by a specific statute. As a matter of Jersey customary law, each partner of a customary law partnership must know all of the other partners (i.e. beneficial owners), otherwise there cannot be a ‘meeting of minds’ (one of the essential requirements in respect of the creation of a partnership contract). Customary law partnerships are owned by their partners. Generally, management is by all of the partners, though this may be delegated to a management committee. The constitution normally consists of a partnership agreement. The insular authorities are aware that customary law partnerships in Jersey are used by those carrying out local Jersey businesses. They are used in particular by Jersey lawyers and general medical practitioners and, to a lesser extent, by accountants and other Jersey trading businesses.
114. In order to practice Jersey law, a Jersey lawyer (Jersey Advocate or Solicitor under the Advocates and Solicitors (Jersey) Law 1997) must either be established in partnership with other

Jersey lawyers or be a sole practitioner. The insular authorities are aware that there are approximately 20 law firms in the Island practicing as customary law partnerships.

115. Many general medical practitioners in the Island also practice in a customary law partnership. The insular authorities are aware that there are approximately 20 such partnerships in the Island.

116. General partnerships are not subject to any registration requirements under customary law.

Foundations

117. A foundation will be incorporated under the Foundations (Jersey) Law 2009 (“**Foundations Law**”) which entered into force in July 2009. 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 without shareholders and with or without beneficiaries.

118. A Jersey foundation is capable of exercising all the functions of an incorporated body, save that it cannot directly acquire or hold Jersey immovable property, nor engage in commercial trading activities unless such activities are incidental to the attainment of its objects.

119. Foundations are recorded in a public register held by the Registrar, which records the foundation’s name, date of incorporation and its registration number, and the name and address of the qualified member (see below). Under Article 40, the foundation’s 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.

120. The Foundations Law, amongst other things, provides for the incorporation, administration, and winding-up of foundations. The incorporation of a Jersey foundation is an activity regulated under the Financial Services Law, so that only a person who is appropriately licensed under that law can apply for the incorporation of a foundation

121. The Law requires a foundation to have a charter and regulations, explains the rights of beneficiaries, and explains the role of the council. Every foundation will have a council to organise its affairs with similar functions and duties to directors of a company.

122. The foundation’s regulations are private. 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. One or more of the members of the council must be a “qualified member”. A foundation must have a guardian, charged with taking such steps as are reasonable in all the circumstances to ensure that the council carries out its function.

123. The founder of a foundation is the person (who may be an individual or a body corporate) who instructs a qualified person to apply for the incorporation of the foundation, regardless of whether or not that person donates any assets to the foundation. A person who donates assets to the foundation after incorporation will not be regarded as a founder, unless the regulations of the foundation provide otherwise.

124. The qualified member must be a person licensed to act as a council member of foundations under the relevant provisions applying to trust company business pursuant to the Financial Services Law. The business address in Jersey of the qualified member will become the business address of the foundation in the Island. Statutory and financial books and records must be maintained at the business address of the foundation and must be sufficient to show and explain the foundation’s transactions and disclose with reasonable accuracy its financial position.

Trusts

125. Jersey trusts law comprises both the Trusts (Jersey) Law 1984 (**the “Trusts Law”**), as amended from time to time⁴⁰, and Jersey customary law of trusts. 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.*” Jersey’s trust legislation is supported by a body of case-law from the Island’s courts. Foreign trusts are governed by trusts laws from their jurisdictions. They are non-enforceable if they are contrary to Jersey law or if they confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Jersey, or to the extent that the court declares that they are immoral or contrary to public policy or if they apply directly to immovable property situated in Jersey (Article 49).
126. Trusts are not subject to registration requirements under customary law or the Trusts Law. Information is kept by the Companies Registry to the extent that a trust is a beneficial owner or controller of a Jersey company. Information on trusts is kept by the trust company business division of the Commission (e.g. information collected in respect of trusts administered by private trust companies and certain funds subject to AML/CFT requirements).
127. A trust under Jersey law is a legal arrangement whereby a person (settlor) transfers assets or property to another person (trustee), who holds legal title to those assets not in his own right but (1) for the benefit of another whether or not yet ascertained or in existence or (2) for any purpose which is not for the benefit only of the trustee or (3) for both.
128. A trust established under Jersey law is administered by the trustee in accordance with the provisions of the trust instrument and the Trusts Law. The performance of a trustee’s duties is enforced by the Royal Court of Jersey. A Jersey trust must have at least one trustee, but is not subject to any maximum under the law. A Jersey trust may have non Jersey individuals or entities as trustees and Jersey regulation of that non-resident trustee will only apply if it carries on or solicits business in Jersey.
129. Jersey courts have jurisdiction in all cases where the trust is a Jersey trust. In the case of a foreign trust, they have jurisdiction in three cases: a) when a trustee of a foreign trust is resident in Jersey (if it is a company incorporated in Jersey), b) where any trust property of a foreign trust is situated in Jersey or c) when the administration of any trust property of a foreign trust is carried on in Jersey. However, in Jersey, as in England and elsewhere, the court may decline to exercise its jurisdiction through the operation of the doctrine known as *forum non conveniens*, where it is satisfied that there is some other available forum, having competent jurisdiction, which is the most appropriate forum for the trial of the action.
130. Jersey trust legislation sets out specific provisions allowing a settlor to have reserved to himself or to grant to a third party certain powers, (which may include the right to amend or revoke the trust terms, to give binding instructions with respect to management of the trust property, to appoint or remove trustees, beneficiaries, enforcers, and protectors, to change the law of the trust) which shall not, of itself, affect the validity of a trust or delay the trust taking effect⁴¹. Trusts are generally created by a private document to which the settlor and the trustees are the only parties. The trust instrument does not have to be filed with any public body in Jersey. Beneficiaries of a trust may be entitled to certain information regarding the trust. Trustees are required to disclose to beneficiaries any document which relates to, or forms part of the accounts of the trust.
131. The Jersey courts will make a determination, dependent on the facts of a particular case, as to whether they would grant a beneficiary of a trust the right to see letters of wishes, as trustees are not obliged to disclose to beneficiaries their reasons for exercising their discretionary power.

⁴⁰ Since the previous evaluation, it was amended in 2012 and 2013.

⁴¹ Trusts (Jersey) Law 1984, Section 9A (Powers reserved by settlor).

Trustees are under a duty to treat information relating to the trust confidentially, the principal exception to this duty being if they are subject to an order of the court in Jersey.

132. The instructions from the settlor to the trustee as to the disposition of trust assets are normally contained in a document named the trust instrument. In addition to the trust instrument it is also common for a settlor to indicate to the trustee his wishes as to the management and disposition of the trust fund in a less formal manner - in a *letter of wishes* - which, although not legally binding, will generally be considered by the trustee to be of persuasive effect when performing his duties.
133. In addition to these documents are "Trust minutes" whose purpose is to document a meeting of the trustees and the decisions made by the trustees at the meeting. Under Jersey law, trustees are generally also permitted to document decisions by way of written resolutions. There are no prescriptive legal requirements with respect to the form trustees' minutes must take and the content that minutes must include. While there is no legal form that trust minutes must take, the content of how Trustees minute decisions should have constant reference to the framework of the Trusts Law and obligations placed upon them therein. Trustees are able to implement an approach that they consider appropriate.
134. 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 by reference in one of only two ways, 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 information on the settlor, protector, beneficiaries, persons who are the object of a power, and co-trustees. Records are also required to be kept by a trustee under the Taxation (Accounting Records) (Jersey) Regulations 2013. Failure to keep up to date, full and accurate records could lead to prosecution.
135. Private trust companies (PTCs) are used in Jersey and are not required to be registered with the Commission unlike professional trust companies. Otherwise, regulatory requirements are the same as for professional trust companies. PTCs (that is, Jersey registered companies who provide certain trust company business services in respect of a trust or trusts) are exempted from having to obtain a licence to carry on that trust company business if the PTC does not solicit from or provide trust company business services to the public and its administration is carried out by an entity that is registered to carry out trust company business in Jersey. The registered person is expected to carry out sufficient administration and have instituted customer due diligence initially, and on an ongoing basis, to be satisfied it has taken reasonable steps to ensure the company under its administration is not operating unlawfully, i.e. that is outside the scope of the exemption. Where the registered person fails in this, it may not be directly liable for the unlawful activity of the PTC, but could be found to have inadequate systems and controls.
136. The number of trusts linked to Jersey TCSPs can be estimated, based on the 75,000 entities administered, disclosed to the Commission in the latest TCB annual return.

Other relevant legislation and codes of practice

137. Other relevant legislation includes also the Taxation (Accounting Records) (Jersey) Regulations 2013 and also the Control of Housing and Work (Jersey) Law 2012.
138. Under the Control of Borrowing (Jersey) Order 1958 ("Control of Borrowing Order"), the prior consent of the Commission is required (subject to certain exemptions) to the issue of:
- Shares or securities by a Jersey company;

- Units by a Jersey law unit trust;
- Partnership interests by a Jersey limited partnership (all forms); and
- Partnership interests by a Jersey LLP;

In addition:

- A body corporate not incorporated under the law of Jersey seeking to raise money in Jersey by issue of shares or securities must seek permission to do so; and
- In the case of continuance of external body corporates in Jersey, a certificate of continuance shall not be issued to a body corporate unless it has obtained the consent of the Commission to keep in issue, on its continuance in Jersey, its shares, debentures and other securities that are in issue at the time when it applies for the certificate of continuance.

139. Before granting consent under the Control of Borrowing Order, the Commission must be satisfied under Article 2(3) of the Control of Borrowing (Jersey) Law 1947 (the “Control of Borrowing Law”) that doing so will be in accord with the need to protect the integrity of the Island in commercial and financial matters and be in the best economic interests of the Island. By virtue of the Schedule to the Control of Borrowing Law, any person who contravenes any provision of the Control of Borrowing Order shall be liable to imprisonment for a term not exceeding 5 years or to a fine or to both.
140. In addition, trust and company services providers are required under the Money Laundering Order to find out the identity and to verify the identity of the beneficial owners of structures that they administer, and to keep information and records collected.
141. The JFSC Codes of Practice for trust company business, which set out the principles and detailed requirements that must be complied with in the conduct of trust company business were first issued in November 2000 and last updated on 1st of July 2014⁴².
142. The enactment of the Financial Services Commission (Amendment No 6) (Jersey) Law 2015 permits the JFSC to impose civil financial penalties to entities which breach the Codes of Practice.
143. Further information is provided under Recommendations 33 and 34.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

Updated AML/CFT Strategies and Priorities

144. Ministerial responsibility for all financial services areas including overarching responsibility for financial crime policy has transferred to the Chief Minister pursuant to the States of Jersey (Transfer of Functions No.6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013. This has streamlined, and ensured more effective coordination of, the Island’s political engagement and action in all financial services matters.
145. The Chief Minister is advised on the AML/CFT Framework of the Island by the Jersey Financial Crime Strategy Group (the “Strategy Group”). Since 2009, the Strategy Group’s work has been particularly focussed around implementing the recommendations of the IMF report along with the implementation of the 2008 Island Strategy to Counter Money Laundering and the Financing of Terrorism. The actions of the group in relation to specific recommendations from the previous assessment report are detailed elsewhere in this report.

⁴² http://www.jerseyfsc.org/the_commission/codes_of_practice/

146. The Strategy Group undertook to carry out regular reviews of the Island Strategy, including the vulnerabilities and goals identified in it, to ensure that the document remained current and relevant. The Strategy was updated in May 2011 to include a new vulnerability, which had emerged in the existing economic climate and followed 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 ML and FT risks. The strategy document sets out three goals :

- Raise awareness of statutory AML/CFT obligations in those sectors considered to have lower awareness.
- Raise awareness of ML and FT typologies that are relevant to Jersey.
- Raise awareness of the importance of considering the issues involved in dealing with higher risk jurisdictions.

147. Updates were also given in the revised document in relation to the registration and supervision of non-profit organizations and the introduction of provisions relating to cross-border physical cash transfers of €10,000 or more :

- Following the entry into force of the registration requirement for non-profit organizations under the Non-Profit Organizations (Jersey) Law 2008, the Commission has conducted a review of the size and nature of the NPO sector in Jersey, and risks that it may present. Its findings were submitted in January 2010 to the AML/CFT Strategy Group, outlining the risk assessments conducted on the 569 NPOs registered by the Commission and the 1,081 “regulated” NPOs, i.e. those NPOs administered by persons carrying on financial services business under the Financial Services Law.
- A change to the Customs and Excise (Jersey) Law 1999 allows Customs’ officers to require any person that is entering or leaving Jersey to disclose whether or not they are carrying cash of €10,000 or more. The introduction of provisions regulating cross-border physical cash transfers allows the Island’s authorities to respond to intelligence that “tainted cash” is being brought into or taken out of the Island.

148. The Island’s AML/CFT policy objective is to comply with the revised FATF recommendations, as communicated to the President of the FATF in a letter from the Island’s Chief Minister dated 24 February 2012. The authorities have indicated that next major review of the Strategy is scheduled to take place after the selection of the methodology to assist in the preparation of a National Risk Assessment in line with revised FATF Recommendation 1.

b. The institutional framework for combating money laundering and terrorist financing

149. There have been no major changes to the institutional framework for combating money laundering and terrorist financing as described in the 2009 IMF report.

Ministerial level

150. Notwithstanding the Chief Minister’s responsibility for financial crime policy, the following ministers have each a role, as broadly summarised below.

151. The *Minister for Home Affairs* is responsible for the Police and the enforcement responsibility of Customs in respect of financial crime. The Minister for Home Affairs is also responsible for the Terrorism Law.

152. The *Minister for External Relations* exercises his responsibilities in accordance with the Common (Foreign) Policy of the Council of Ministers, with regard to the imposition of United Nations (“UN”) and EU financial sanctions and, in fulfilment of the Island’s international treaties

obligations. The Ministerial position was recently established, by virtue of the States of Jersey (Minister for External Relations) (Jersey) Regulations 2013 which came into force on 10 September 2013. According to the Terrorist Asset-Freezing (Jersey) Law 2011, the Minister has the power to issue interim and final designations, as well as relevant entities have the obligations to report to him different types of information related to designated persons. Under the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012, the Minister is authorised to issue a general (in the form of order) or individual direction to a relevant person under specified circumstances related to a recognised or supposed ML/TF or weapons development risk in a country or territory outside of Jersey, with the aim to provide instructions for dealing with a business relationship or undertaking transactions in connection with persons from that country.

153. The *Minister for Economic Development* is responsible for the enactment or amendment of Gambling legislation.

154. The *Minister for Treasury and Resources* is responsible for administering the Criminal Offences Confiscation Fund which exists for the confiscation of the proceeds of crime. The Taxes Office (which is part of Treasury & Resources) is represented on the Strategy Group by the Comptroller of Taxes.

Attorney General and the Law Officers' Department

155. The Attorney General, a Crown appointment, is head of the Law Officers' Department (LOD), Jersey's prosecution service, and is the legal adviser to the Crown and the States (and its Ministers and Departments). The Attorney General has statutory investigatory powers in respect of cases of serious or complex fraud, under the Investigation of Fraud (Jersey) Law 1991 ("Investigation of Fraud Law"). The LOD and the JFCU work closely together not only in relation to this sharing of intelligence but also in identifying cases for investigation, the investigations themselves and in sharing information relevant to mutual legal assistance requests.

156. Enforcement is carried out under the direction and discretion of the Attorney General, where a criminal prosecution is appropriate, aided by the Centeniers of the Honorary Police (elected parish officers), who lay charges in front of the Magistrate's Court. Where a criminal prosecution by the Attorney General is successful, the Magistrate's Court (maximum jurisdiction of 12 months' imprisonment and/or £5,000 fine) and the Royal Court of Jersey have the power to apply criminal penalties (such as a fine and/or imprisonment). The Royal Court does not impose a sentence without hearing the conclusions of the Attorney General.

157. Apart from the function of prosecutor, the Attorney General also has competencies as: legal adviser to the Crown on matters of Jersey law; legal adviser to the States Assembly, Ministers, Scrutiny Panels and other public bodies; he is responsible for mutual legal assistance; for protecting the interests of the Crown and the States in civil proceedings; and he is the titular head of the Honorary Police.

158. The LOD is responsible for the prosecution of money laundering, terrorist financing, and serious or complex fraud. It is in the discretion of the Attorney General to decide whether to bring proceedings, and if so, on what charge. The LOD is composed of two customary law appointments by Her Majesty, the Attorney-General and the Solicitor General, who is his deputy; together with other advocates, solicitors and legal professionals who are qualified in other jurisdictions such as England and Wales. The Law Officers themselves may prosecute cases otherwise appointed Crown Advocates may appear on behalf of the Attorney General in the Royal Court and police legal advisers employed by the LOD or external advocates may appear as prosecutor only in the Magistrate's Court.

The Police

159. The Police are responsible for policing in Jersey along with the Honorary Police (voluntary forces established in each of the Island's twelve parishes).

The Joint Financial Crimes Unit [of the States of Jersey Police and Jersey's Customs and Immigration Service]

160. The Joint Financial Crimes Unit (hereinafter referred to as "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 Head of the JFCU is a Detective Inspector who reports directly to senior officers of the States of Jersey Police. The JFCU is divided into an Intelligence Team, Operational Team, and Drugs Trafficking Confiscation Team with administrative support across the department.
161. The Intelligence Team fulfils the JFCU's role as the Island's Financial Intelligence Unit (FIU). In addition to dealing with SARs, the FIU also receives and responds to requests for assistance (typically from overseas FIUs on AML/CFT enquiries), as well as miscellaneous information reports from a variety of sources. FIU administrative staff utilise a bespoke stand-alone database to manage all work passing into and out of the department and provide formal responses upon the receipt of SARs and other correspondence.
162. The Operational Team is responsible for carrying out criminal investigations into serious and complex fraud, and investigations originating from the development of SARs. The Drugs Trafficking Confiscation Team undertake the specialised investigations required to confiscate the realisable assets of those who have been convicted for drug trafficking offences and has responsibility for the compilation of confiscation reports, which are later presented to the Royal Court. In addition, this Team also oversees all cash seizures made under the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008.
163. The JFCU also has responsibility for the compilation of confiscation reports, specifically for drug trafficking offences, that are later presented to the Royal Court. Both the JFCU and the Law Officers' Department are responsible for the investigation of ML and FT. 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.
164. At the international level, the JFCU is a member of the Egmont Group.

Jersey Financial Services Commission

165. The Jersey Financial Services Commission (Commission/JFSC) supervises relevant persons for compliance with AML/CFT legislation and regulatory requirements under the Supervisory Bodies Law. The Commission is an independent statutory body established under the Financial Services Commission (Jersey) Law 1998. The JFSC is accountable for its overall performance to the States through the Chief Minister.
166. The JFSC is responsible for the regulation, supervision and development of the financial services industry, including banking, collective investment funds, fund services business, insurance business, general insurance mediation business, investment business, money service business, and trust and company service providers. Additionally, the JFSC is also the supervisory body for compliance with AML/CFT legislative and regulatory requirements under the Supervisory Bodies Law. Apart from the above listed entities from the financial sector, this supervision also applies for the other sectors that are subject to regulatory oversight of their anti-money laundering and countering the financing of terrorism responsibilities, this includes: Accountants; Lawyers; Estate Agents; and High Value Goods Dealers.
167. In addition, the Commission also operates Jersey's Companies Registry, hosts the Island's Security Interests Register, administers the Control of Borrowing Law, and registers non-profit organizations ("NPOs") under the Non-Profit Organizations (Jersey) Law 2008 (the "NPO Law"). The Director General of the Commission is also the Registrar of Companies. With respect to

NPOs, the NPO Law requires the Commission to determine if an NPO is assisting or being used to assist terrorism. Where it suspects that an NPO is, the Commission must inform the Attorney General in order that appropriate action may be taken.

168. Enforcement is carried out by the Commission where the imposition of an administrative regulatory sanction is appropriate. The Commission has the power to impose administrative regulatory sanctions for breaches of AML/CFT obligations.

The Jersey Gambling Commission

169. The Jersey Gambling Commission (“JGC”) was created by the Gambling Commission (Jersey) Law 2010 which came into force on 3 September 2010. All responsibilities for licensing, registration and regulation of gambling prescribed as the duty of the Minister (Economic Development), the former Licensing Assembly or other States of Jersey bodies were transferred to the JGC with the exception of functions in relation to the Channel Islands Lottery which remain with the Minister for Economic Development. However, as there are no casinos operating in Jersey at the moment, it was not considered as a matter of urgency to transfer the AML/CFT supervisory duties for the gaming and e-gaming sector, and these therefore remained with the JFSC.

Customs

170. The Jersey Customs and Immigration Service has responsibility for policing the Island’s border and also provides officers that sit within the drugs proceeds confiscation team of the JFCU - which has responsibility for financial investigations relating to drug trafficking in Jersey. Customs is responsible for seizing illicit drugs and ‘tainted cash’ (as defined in the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008) (the “Cash Seizure Law”) and is able to require cash disclosures from individuals entering and leaving the Island.

Viscount and Viscount’s Department

171. The Viscount is an office holder in the Judicial branch of government and Chief Officer of the Department which is the executive arm of the Island’s Courts and of the States Assembly. The Department is therefore principally required to execute orders of the Courts. In addition, among many other functions, the Department fulfils the duties of Coroner, administers Désastre and similar proceedings (insolvency administration and investigation) serves legal process (summonses and other legal documents) and enforces fines and judgment debts (court enforcement duties). Once a Court order has been obtained, for example the seizure or freezing of assets, or a confiscation order, the Viscount will be responsible for the enforcement of that order.

Jersey Asset Recovery Task Force

172. In 2013, Jersey created the Jersey Asset Recovery Task Force (“JARTF”) to specifically coordinate the Island’s efforts to trace the proceeds of corruption from Arab Spring jurisdictions. JARTF meetings are chaired by the Head of the JFCU and the Commission provides the secretariat. Members of JARTF include senior members of the JFCU, LOD and the Chief Minister’s Department.

c. *The approach concerning risk*

173. Although at the time of the on-site visit no full national risk assessment was conducted by the Authorities, the authorities provided information on the domestic and international risks.
174. Risk-based approach is applied at the policy level, the Financial Crime Strategy Group carries out regular reviews of the strategy document, including the vulnerabilities and goals identified in it, to ensure that the document remained current and relevant.
175. 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 ML and FT risks. 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 ML and FT typologies that are relevant to Jersey.
- Raise awareness of the importance of considering the issues involved in dealing with higher risk jurisdictions.
- Updates were also given in the revised document in relation to the registration and supervision of non-profit organizations and the introduction of provisions relating to cross-border physical cash transfers of €10,000 or more.

176. The JFCU periodically reports to the Strategy Group on emerging risks and trends. In addition, papers are presented to the Strategy Group on the opportunities and risks of emerging products and technology e.g. crypto-currency.

177. The importance to apply a risk-based approach when conducting CDD is also widely understood by the financial sector, as well as the representatives of the TCSP sector.

d. *Progress since the last mutual evaluation*

178. Following the IMF evaluation, the authorities have developed in 2009 a detailed action plan⁴³ to address the recommendations made by the IMF in the evaluation report, which is being updated on a regular basis.

179. The Island's Strategy to counter money laundering and the financing of terrorism⁴⁴, 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.

180. Jersey has also enacted several important pieces of legislation and has made changes to its legal and regulatory requirements and guidance to strengthen the criminal and regulatory AML/CFT framework. Several changes have also been made to the relevant AML/CFT Handbooks which impacted positively on the effectiveness of the AML/CFT system.

181. The sections below set out in detail the changes introduced, and where important developments have taken place after the two-month period after the onsite visit, they have been reflected in a footnote.

⁴³ http://www.jerseyfsc.org/pdf/Action_Plan_FATF_40+9_Recommendations_2013.09.17.pdf

⁴⁴ http://www.jerseyfsc.org/anti-money_laundering/information_and_publications/island_strategy.asp

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

Recommendation 1 (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

182. The IMF evaluation assessed three separate pieces of legislation which were then in force: The Proceeds of Crime (Jersey) Law 1999 (Proceeds of Crime Law), The Drug Trafficking Offences (Jersey) Law 1988 (Drug Trafficking Offences Law) and money laundering provisions in the Terrorism (Jersey) Law 2002 (Terrorism Law). In August 2014 the provisions dealing with proceeds of crime of all kinds, including the proceeds of crime relating to drug trafficking were consolidated into the Proceeds of Crime Law through the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014 (hereinafter the Proceeds of Crime and Terrorism Law). At this time the Drug Trafficking Offences Law was repealed.
183. Money laundering, having previously been criminalised in the three above pieces of legislation, is now criminalized in Articles 29 to 31 of the Proceeds of Crime Law.
184. Four deficiencies were identified in the IMF report, with regard to the scope of the offences set out in the Proceeds of Crime Law and Drug Trafficking Offences Law, namely:
- Deficiency 1: Articles 34 of the Proceeds of Crime Law and 30 of the Drug Trafficking Offences Law were found insufficiently wide to fully meet the international standard due to the requirement that acts of “concealing or disguising” and “converting or transferring” be carried out for the purpose of avoiding prosecution for a predicate offence;
 - Deficiency 2: The defence (payment of adequate consideration) provided for in Articles 33(2) of the Proceeds of Crime Law and 38(2) of the Drug Trafficking Offences Law 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.
 - Deficiency 3: Article 18 of the Terrorism Law does not cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions.
 - Deficiency 4: The offences of acquisition, possession, or use of the Proceeds of Crime Law and Drug Trafficking Offences Law as well as the money laundering offence contained in the Terrorism Law do not extend to self-laundering.

Legal Framework

185. Jersey has amended its legislation so as to bring it mostly into line with relevant international conventions. The evaluation team noted with approval amendments, which addressed most of the shortcomings previously identified: the additional purposive element of the ML offence; the defence of “adequate consideration”; and “self-laundering”. During the on-site the evaluators raised their concerns with the authorities regarding the fact that while the definition of “property” in the legislation is broad, the international standards in this regard have not been comprehensively transposed. The evaluators considered that the language of the conventions (and the FATF definitions) clearly covering legal documents or instruments evidencing title to or interest in such assets should be adopted to avoid legal uncertainty, which otherwise might be the subject of future litigation in the context of Jersey’s financial industry. The evaluators were then

informed that legislative amendments, as detailed below, were made after the onsite visit in this respect.

186. Money laundering is now criminalized in Articles 29 to 31 of the Proceeds of Crime Law which read:

“29 Criminal property

- (1) For the purposes of this Part of this Law, property is criminal property if –*
 - (a) it constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly; and*
 - (b) the alleged offender knows or suspects that it constitutes or represents such proceeds.*
- (2) For such purposes it does not matter –*
 - (a) whether the criminal conduct was conduct of the alleged offender or of another person;*
 - (b) whether the person who benefited from the criminal conduct was the alleged offender or another person; nor*
 - (c) whether the criminal conduct occurred before or after the coming into force of this provision.*

30 Offences of dealing with criminal property

- (1) A person who –*
 - (a) acquires criminal property;*
 - (b) uses criminal property; or*
 - (c) has possession or control of criminal property,**is guilty of an offence.*
- (2) For the purposes of paragraph (1) –*
 - (a) having possession or control of property includes doing an act in relation to the property; and*
 - (b) it does not matter whether the acquisition, use, possession or control is for the person’s own benefit or for the benefit of another.*
- (3) A person who –*
 - (a) enters into or becomes concerned in an arrangement; and*
 - (b) knows or suspects that the arrangement facilitates, by any means, the acquisition, use, possession or control of criminal property by or on behalf of another person,**is guilty of an offence.*
- (4) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.*
- (5) A person shall not be guilty of an offence under this Article in respect of anything done by the person in carrying out any function relating to the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.*
- (6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (1) if the person acquired, used, possessed or controlled the property for adequate consideration.*
- (7) The defence of adequate consideration in paragraph (6) shall not be available where –*
 - (a) property or services provided to a person assist that person in criminal conduct;*

- (b) *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*
- (c) *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.*
- (8) *No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.*

31 Concealment etc. of criminal property

- (1) *A person who –*
 - (a) *conceals criminal property;*
 - (b) *disguises criminal property;*
 - (c) *converts or transfers criminal property; or*
 - (d) *removes criminal property from Jersey,**is guilty of an offence.*
- (2) *In paragraph (1), reference to concealing or disguising property includes reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.*
- (3) *A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine or to both.*
- (4) *A person shall not be guilty of an offence under this Article in respect of anything done by the person in carrying out any function relating to the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.*
- (5) *Without prejudice to any provision in the preceding paragraphs of this Article, the importation or exportation for any purpose of criminal property which constitutes or represents the proceeds of drug trafficking is prohibited.*
- (6) *No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General."*

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

- 187. The Jersey authorities have addressed most of the deficiencies previously found, though some concerns remain.
- 188. *Deficiency 1:* Articles 34 of the Proceeds of Crime Law and 30 of the Drug Trafficking Offences Law were found not sufficiently wide to fully meet the international standard due to the requirement that acts of “concealing or disguising” and “converting or transferring” be carried out with the purpose of avoiding prosecution for a predicate offence.
- 189. The new Article 31 of the Proceeds of Crime Law eliminates the purpose requirements for the acts of converting and transferring proceeds, and it is now an offence to convert and transfer “criminal property” as it is to conceal or disguise it no matter for what purpose.
- 190. Rather than providing 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, the Jersey authorities chose to eliminate the purposive element from the offence. This approach seems to be technically in line with the Palermo and Vienna conventions, and in fact potentially enhances the ability to prosecute money laundering, as the prosecution need not prove the purpose of the concealing, disguising, converting or transferring.

191. Nevertheless the elimination of the "purpose" element from the definition of the offence may have a negative impact on the effectiveness of prosecuting money laundering in Jersey. One might argue that the purposive element of the crime (either "avoiding prosecution for the predicate offence" or "concealing the illicit origin of the funds") reflects the nature of the "protected value", damaging of which may justify dissuasive sentencing. It remains to be seen how indeed the courts will apply sentencing for the offence in its current wording, especially considering that the offence in Article 31 carries a potential punishment of 14 years in prison - identical to that of the crime of possessing criminal property (Article 30).
192. *Deficiency 2:* The defence (payment of adequate consideration) provided for in Articles 33(2) of the Proceeds of Crime Law and 38(2) of the Drug Trafficking Offences Law was found not to be consistent with the Vienna and Palermo Conventions since it may allow money launderers to abuse the provision to avoid criminal liability for the acquisition, possession, or use of criminal proceeds/proceed.
193. In the new Article 30(6) of the Proceeds of Crime Law the defence of adequate consideration remains notwithstanding the IMF Report, if "*the person acquired, used, possessed or controlled the property for adequate consideration.*", though an additional restrictive clause has been added considerably limiting the scope of the defence, stating that it shall not be available where "*(a) property or services provided to a person assist that person in criminal conduct; (b) 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 (c) 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.*"
194. Whereas these additional elements significantly narrow the scope of the deficiency previously found, the current wording still falls short of the Palermo and Vienna conventions leaving a defence which potentially adds to the prosecutor's burden. This is especially true with regard to transfer of rights in complex arrangements and legal formations the value of which might not always be easily determined. For completeness, it is noted in this context that this defence is also in the UK POCA legislation in respect of possession and use, but not in respect of both the ML offences involving concealment of criminal property and entering into or becoming concerned in a ML arrangement. Nevertheless, in the context of Jersey, it is also noted that this defence does not exist with regard to the offences in Articles 15 and 16 of the Terrorism Law, although the defence in the Proceeds of Crime Law is more restrictive than UK POCA , i.e. if there is assistance, the defence is not available regardless of the mental element (i.e. strict liability) and further the defence is not available if the defendant has reasonable grounds to suspect the property will or may assist another in criminal conduct). The evaluators cannot see a strong reason to distinguish between ML and TF in this context.
195. *Deficiency 3:* Article 18 of the Terrorism Law had been found to not cover all material elements of the money laundering provisions of the Palermo and Vienna Conventions.
196. In the current Proceeds of Crime Law Articles 30 and 31 relate to "criminal property" defined in Article 29 as property which constitutes "*proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly*". It follows that money laundering offence does not necessarily cover property obtained through the commission of an offence (but which is not proceeds of crime derived from criminal conduct).
197. *Deficiency 4:* The offences of acquisition, possession, or use of the Proceeds of Crime Law and Drug Trafficking Offences Law as well as the money laundering offence contained in the Terrorism Law, were found not to extend to self-laundering.
198. The Jersey authorities stated that the 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 Proceeds of Crime and Terrorism 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. See Article 30 of the Proceeds of Crime and Terrorism Law which inserts a new Article 29 into the Proceeds of Crime Law.

199. Nevertheless, Article 30(3) of the Proceeds of Crime Law defines as a crime when a person "enters into or becomes concerned in an arrangement; and knows or suspects that the arrangement facilitates, by any means, the acquisition, use, possession or control of criminal property" but only if "by or on behalf of another person.". It follows that money laundering facilitated through arrangements is limited to 3rd party laundering and does not cover self-laundering. The evaluators accept that this is not a deficiency as it appears that the offence is primarily designed to catch third parties who become involved in laundering schemes. A person involved in self-laundering where there is such an arrangement could be charged with one of the other ML offences.

The laundered property (c.1.2)

200. At the time of the onsite visit Article 1 of the Proceeds of Crime and Article 1 of the Terrorism Law defined 'property' to include "all property whether movable or immovable, vested or contingent, and situated in Jersey or elsewhere" . In the discussions with the Jersey authorities the evaluators expressed the view that this definition falls short of the requirements set in Article 2 of the Palermo convention which include "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets."
201. Article 30(3) of the Proceeds of Crime Law criminalises "A person who (a) enters into or becomes concerned in an arrangement; and (b) knows or suspects that the arrangement facilitates, by any means, the acquisition, use, possession or control of criminal property by or on behalf of another person,.". It is noted that the useful language regarding the extent of acts involving concealment of property in Article 31(2) [regarding the nature, source, location, disposition, movement or ownership or any rights with respect to property], which is drawn from the Conventions, is not included in the Article 30(3) ML offence.
202. Notwithstanding this, the Jersey authorities pointed to both the conclusions of the IMF evaluators and to case law (e.g. Michel v AG [2006] JCA 082B)⁴⁵ where "arrangements" in this context had been construed widely:

"One was that the count had to specify an arrangement with a specified person (being what was referred to as "the predicate criminal"), or with an intermediary on his behalf. We reject this submission. In our view there is no warrant for it in the Law. Article 32 specifies only – for present purposes – that there be an arrangement which has the result of, or is part of the mechanism for, relevant retention or control, that the property controlled is the proceeds of crime and that it is A's. Whilst the offence is only complete when the defendant knows or suspects that the other person has a connection with criminal conduct, it seems to us an unwarranted restriction either that the arrangement must be able to be specified as being with, or on behalf of, an identified person or that the defendant knew that individual. What is required is that the defendant knew or had reason to suspect the owner's connection with criminal conduct. Whilst that may be easier to prove where the identity of the individual is known to the defendant, we see no inherent obstacle in seeking to prove that, in the whole circumstances, the defendant either knew or must have suspected that the property was the property of an owner who had the requisite connection with criminal conduct.

⁴⁵ Additional reference was made to the judicial committee of the Privy Council (regarding an Isle of man case) in Holt v AG[2014] UKPC 4

This approach appears to us entirely consistent with the usual nature of money laundering where the "arrangements" will have numerous, often diverse, links in a chain which tries to render the proceeds of crime untraceable. It is consistent with this that the Law itself does not require the arrangement to be with or on behalf of A."

203. It is also worth comparing in this context the crime of dealing with terrorist property as defined in Article 16 of the Terrorism Law, and which usefully includes any act "*which facilitates the retention or control of terrorist property*" and "(c) transferring the property to nominees".
204. The narrower definition of property in the Jersey law in some cases raised special concern in a jurisdiction where the risk of money laundering can relate to abuse of complex legal arrangements and structures. In this context money laundering may be executed through the formation of legal documents, transfer of securities, voting rights, and appointing a person to a function (e.g. company director, trust protector etc.).
205. Another possible shortcoming is in the definition of "criminal property" defined in Article 29 of the Proceeds of Crime Law as property which "constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly" which falls somewhat short of the definition in Article 1(e) of the Palermo convention requiring "proceeds of crime" to mean any property "derived from or obtained, directly or indirectly, through the commission of an offence;" as a result the law does not necessarily cover property obtained through the commission of an offence (but which is not proceeds of crime derived from criminal conduct).
206. In the onsite discussions with the Jersey authorities, they expressed the opinion that the current definition of property is sufficient, relying both on the conclusion of the IMF evaluation which concluded that the definition of property as found in the 1999 Law was sufficiently wide, and on Jersey jurisprudence. Specific reference was made in this context to paragraph 107 of the IMF Report, referring to the legal textbook in Jersey "Jersey Insolvency and Asset Tracing". The book provides, *inter alia*, helpful definitions of moveable and immoveable property and is often cited in court. The text continues to be a relevant legal authority in the Island.

"Movable Property (Meuble)

All property that is not immovable property, (e.g.) personal belongings, cars, money, shares etc., and includes hypothèques judiciaries and may be tangible or intangible. Clearly, "new economy assets" such as website domain names and software licenses are capable of falling within this categorization of property".

207. The IMF Report at paragraph 107, and the example of the *saisie* in which shares were frozen in the Michel case, together with the wide scope of the definition which includes all property are reasons why the authorities considered that the definition of property is wide enough. The evaluators discussed with the authorities in this context that the UK POCA definitions of property in sections 340(10)(a) and (d) contain useful clarifications, which could be of value in Jersey: property is obtained by a person if he obtains an interest in it; references to an interest in relation to property other than land include references to a right (including a right to possession).

Legislative amendments after the on-site visit

208. Subsequent to the onsite visit, the evaluators were pleased to be informed that the Jersey authorities made some legislative amendments to the Proceeds of Crime Law which took effect on 17 March 2015, and therefore are included beneath in this report as improvements to the technical legal framework.

Proceeds of Crime (Amendment of Law) (Jersey) Regulations 2015

209. The Regulations amend the Proceeds of Crime Law specifically to deal with former FATF Recommendation 1 (criminalization of money laundering).

210. The Regulations amend the definition of “property” and the definition of “items subject to legal professional privilege” under the Proceeds of Crime Law, after considering section 340 of the UK Proceeds of Crime Act 2002, the FATF definitions, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism (the “Warsaw Convention”) and, as a result, Regulation 1(b) substitutes the definition of “property” in the Proceeds of Crime Law. The substituted definition of “property” makes it clear that “property” includes legal documents or instruments evidencing title or interest in property, and includes any interest in or power in respect of property and, in relation to movable property, includes a right to possession.
211. The definition of “property” in Article 1 of the Proceeds of Crime Law as amended⁴⁶ now reads:
- (b) for the definition “property” there shall be substituted the following definition – “‘property’ means all property, whether movable or immovable, or vested or contingent, and whether in Jersey or elsewhere, including –***
- (a) any legal document or instrument evidencing title to or interest in any such property;
- (b) any interest in or power in respect of any such property;
- (c) in relation to movable property, any right, including a right to possession, and for the avoidance of doubt, a reference in this Law to property being obtained by a person includes a reference to any interest in that property being obtained
212. The definition of “items subject legal to privilege” has now been deleted by the Proceeds of Crime (Amendment of Law) (Jersey) Regulations 2015.
213. It follows therefore that the deficiency with regard to the definition of property for money laundering purposes has been removed.

Proving property is the proceeds of crime (c.1.2.1)

214. According to Articles 30 and 31 of the Proceeds of Crime Law (as amended by the Proceeds of Crime and Terrorism Law), it is necessary to have a conviction in order to obtain a confiscation order in relation to the proceeds of crime but it is not necessary that a person be convicted of the predicate offence upon which the criminal charge of ML is brought.

The scope of the predicate offence (c.1.3)

215. According to Article 1(1) of and Schedule 1 to the Proceeds of Crime Law (definition of “criminal conduct”) as amended by the Proceeds of Crime and Terrorism Law predicate offences are all crimes with a punishment of more than one year’s imprisonment.

Threshold approach for predicate offences (c.1.4)

216. Not applicable.

Extraterritorially committed predicate offences (c.1.5)

217. Criminal conduct includes crimes committed extraterritorially so long as the relevant conduct would constitute a criminal offence if the conduct had occurred in Jersey (see definition of “money laundering” in Article 1(1) of the Proceeds of Crime Law as amended by the Proceeds of Crime and Terrorism Law).

Laundering one’s own illicit funds (c.1.6)

⁴⁶ Proceeds of Crime (Amendment of Law) (Jersey) Regulations 2015

218. The Jersey authorities consider that the offences of money laundering apply to persons who commit the predicate offence (see in Article 1(1) (definition of “money laundering”) and Article 29 of the Proceeds of Crime Law as amended by the Proceeds of Crime and Terrorism Law).
219. The reader is referred to comments made above in relation to the offence in Article 30(3) of the Proceeds of Crime Law.

Ancillary offences (c.1.7)

220. Inchoate and offences involving accomplices may be charged as offences according to customary law, even though the principal offences to which they relate may be statutory offences (see *Martins & Martins v AG* [2008] JCA 082).
221. Article 1 of the Criminal Offences (Jersey) Law 2009, codifies the customary law and provides that -
- (1) *A person who –*
 - (a) *aids, abets, counsels or procures the commission of a statutory offence; or*
 - (b) *conspires, attempts or incites another to commit a statutory offence, is guilty of an offence and is liable to the same penalty as a person would be for the statutory offence.*
 - (2) *A person alleged to have committed an offence by virtue of paragraph (1) shall be triable in the same manner as a person would be tried for the statutory offence.*
 - (3) *This Article does not affect proceedings for an alleged offence at customary law –*
 - (a) *of aiding, abetting, counselling or procuring the commission of a statutory offence; or*
 - (b) *of conspiring, attempting or inciting another to commit a statutory offence, arising out of an act done by a person before the commencement of this Law.*
 - (4) *However, the person is triable in the same manner as a person would be tried for the statutory offence.*

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

222. Article 29(1) of the Proceeds of Crime Law defines criminal property as follows:
- (a) *it constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly; and*
 - (b) *the alleged offender knows or suspects that it constitutes or represents such proceeds.*
223. Article 1(1) of the Proceeds of Crime Law provides that “proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit.
224. In turn “criminal conduct” is defined in Article 1(1) of the Proceeds of Crime Law to mean conduct, whether occurring before or after Article 3 of the Proceeds of Crime Law comes into force that constitutes an offence in Schedule 1 to the Proceeds of Crime Law, or if it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey.
225. Therefore, if an act overseas would have been a predicate offence domestically, if the defendant uses, possesses or acquires the proceeds of such criminal conduct, or conceals, disguises, converts/transfers or removes such proceeds, he will be caught by the money laundering offences in Articles 31 and 32 of the Proceeds of Crime Law respectively.

Recommendation 32 (money laundering investigation/prosecution data)

226. The table below presents the ML convictions in the years 2010-2014 :

Year	Case	Type, method, other info	Sanction	Confiscation
2010	Michel (1 person)	Third-party ML	4 years imprisonment disqualified from acting as a company director for 6 years	£6,528,707
	Bhojwani (1 person)	Self-laundering Predicate offence: Foreign bribery (contracts with the Nigerian government with the use of a Panama shell company – proceeds held in bank accounts in Jersey) Part of assets confiscated shared with the Nigerian government	6 years imprisonment	\$51,488,916 and £5,594,179 £22, 559,560
2013	McFeat, Smyth and Howard (3 persons)	Third-party ML Predicate offence: Drug trafficking Money exchanged from pounds to euros and with the use of pre-paid travel cards withdrawn in Spain/UK	18 months imprisonment (McFeat) 12 months imprisonment (Smyth) 180 hours community service (Howard)	£3,051 (Smyth)
	Ellis (1 person)	Third-party ML Predicate offence: Drug trafficking Exchanged money from pounds to euros in post-offices and co-operatives	12 months imprisonment	
	Figueira (1 person)	Third-party ML Predicate offence: Drug trafficking Payments made through the post office to Portugal	22 months imprisonment	£8,040

Effectiveness and efficiency

227. The evaluation team noted that there is a continuing number of ML investigations, prosecutions and convictions in Jersey courts, some of these involving 3rd party laundering. Nonetheless several cases resulting in conviction involve relatively small proceeds, generated by domestic drugs offences. Others involve fiscal crime. By contrast two significant landmark cases in 2010 involve very large proceeds of corruption and fraud committed overseas and significant confiscation orders. These cases involved the use of the extensive powers granted to the law officers for prosecution of serious and complex fraud (in which ML is included). Similarly, it is noted that successful prosecutions have been undertaken in respect of gatekeepers. These cases clearly demonstrate the commitment of the Jersey authorities, and such results are to be commended and built upon.

228. Nevertheless additional work and the application of appropriate resources is required to further enhance the effectiveness of investigation and prosecution of ML cases, including when this is committed through the abuse of complex legal arrangements and structures. This goal can be realized by more focused exploitation of existing financial intelligence in domestic SARs to

identify and prioritise Jersey-based ML activities associated with predicate offences for investigation and prosecution.

229. The evaluators have, in their discussions with the local authorities, raised concerns regarding some additional issues which could potentially impede the effective investigation and prosecution of ML. While there is no evidence of abuse of legal professional privilege, the definition of legal professional privilege in Jersey law (both in the Proceeds of Crime Law and the Terrorism Law) is wider than the customary law definition and, in the evaluators' view, should be removed. Furthermore the potentially restrictive legal obstacle preventing the joint prosecution of ML (as a statutory offence) with a customary law offence has been identified by the authorities. It was understood that steps were being taken to address these aspects.

Legal Privilege

230. At the time of the on-site visit, Article 1 of the Proceeds of Crime Law included a definition of "items subject to legal privilege" and of "legal privilege" which read as follows:

"items subject to legal privilege" means

- (a) communications between a professional legal adviser and his or her client or any person representing his or her client, and made in connection with the giving of legal advice to the client; and*
- (b) communications between a professional legal adviser and his or her client or any person representing his or her client, or between such an adviser or his or her client or any such representative and any other person, and made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and*
- (c) items enclosed with or referred to in such communications and made –*
 - (i) in connection with the giving of legal advice, or*
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to their possession, but items held with the intention of furthering a criminal purpose are not items subject to legal privilege; and "legal privilege" has a corresponding meaning";*

231. An additional, slightly different definition of "privilege" appears in Article 21 of the Terrorism Law (Failure to disclose: financial institutions), which reads :

"(8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him or her –

- (a) by (or by a representative of) a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;*
 - (b) by (or by a representative of) a person seeking legal advice from the adviser; or*
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.*
- (9) But paragraph (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose."*

232. And yet another, third definition, in Schedule 5 to that law titled "(Article 31) Terrorist Investigations: Information Searches" which reads:

"11 Interpretation

(1) In this Schedule, "items subject to legal privilege" means, subject to paragraph (2) –

- (a) communications between a professional legal adviser ("A") and the adviser's client ("B") or any person representing B ("C"), made in connection with the giving of legal advice by A to B;*

- (b) *communications between A, B or C or between A, B or C and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;*
 - (c) *items enclosed with or referred to in any such communications and made in connection with the giving of legal advice, or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when such items are in the possession of a person who is entitled to possession of them.*
 - (2) *An item cannot be subject to legal privilege if it is held with the intention of furthering a criminal purpose.*
 - (3) *In this Schedule, "dwelling" means a building or part of a building used as a dwelling, and includes a vehicle which is habitually stationary and is so used."*
233. While discussing this Article with the Jersey authorities no explanation was given as to the reason or motivation for including these definitions, which all seem to be possibly wider than the customary law definition of *legal privilege*, or to the impact it may have on the effectiveness of the AML/CFT regime. No explanation was given as to the variation of the definitions and to the possible negative impact this may have on developing jurisprudence.
234. The concept of "privilege" seems to appear in 2 separate contexts of the Jersey Proceeds of Crime Law (and similarly respectively in the Terrorism Law) :
- a) Article 34D of the Proceeds of Crime Law - Legal Privilege in the context of failure to disclose knowledge or suspicion of money laundering
 - b) Article 40 of the Proceeds of Crime Law - Legal Privilege in the context of exemptions from production of evidence during investigations relating to proceeds of criminal conduct.
235. In discussions with the Jersey authorities they considered that these definitions were more or less in line with the customary law ones both with regard to "litigation privilege" and "legal advice privilege" (as prescribed by the House of Lords in *Three Rivers DC* [2003] QB 1556). The Jersey authorities pointed out that the Jersey definition did not adopt the narrower test adopted in "*Three rivers*" namely that documents would be considered to be covered by privilege only where documents were created for the *dominant purpose* of obtaining legal advice.
236. In the evaluators' opinion reference to legal privilege with regard to the offence of "*failure to disclose*" is of course legitimate under the FATF standards⁴⁷. More surprising is the restrictive definition of *items subject to legal privilege* when applied to investigations and production of evidence⁴⁸. Especially confusing is the fact that the exemption (both in Article 1 of the Proceeds

⁴⁷ In the UK, POCA section 330 criminalizes failure to disclose potential suspicion of money laundering and makes reference to "privileged circumstances" as following:

According to section 330(6) a person does not commit an offence under this section if—

"...

(b) *he is a professional legal adviser and the information or other matter came to him in privileged circumstances,"*

Section 330(10) defines Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

"(a) *by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,*
(b) by (or by a representative of) a person seeking legal advice from the adviser, or
(c) by a person in connection with legal proceedings or contemplated legal proceedings".

But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose

⁴⁸ In the UK POCA section 348 refers to the common law definition of legal privilege with regard to production orders and reads -

"348. *Further provisions*

A production order does not require a person to produce, or give access to, privileged material.

Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court."

of Crime Law and paragraph 11 of Schedule 5 to Jersey Terrorism Law) for privileged information used for "*the intention of furthering a criminal purpose*" seems to apply only to "*objects*" and not to "*communications*".

237. In the onsite discussions the evaluators were assured that there was no evidence of abuse of legal professional privilege, though some of the several and different definitions of legal professional privilege in Jersey law (both in the Proceeds of Crime Law and the Terrorism law), seem as discussed above to be wider than the customary law definition. In these discussions the evaluators expressed the view that these definitions should be removed as they might potentially have a negative impact on the effective investigation and prosecution of money laundering.
238. The evaluators welcomed legislative amendments to the Proceeds of Crime Law after the on-site visit which took effect on 17 March 2015 with regard to the definition of "*items subject to legal privilege*".
239. Regulation 1(a) of the Proceeds of Crime (Amendment of Law) Regulations 2015 deleted the definition of "*items subject to legal privilege*" from the Proceeds of Crime Law.
240. By removing the definition from Article 1(1) of the Proceeds of Crime Law of "*items subject to legal privilege*", any references to legal privilege in that Law shall have the meaning as acquired by the customary law of Jersey. *In Bene Ltd. v VAR Hanson & Partners [1997] JLR N10a, the Royal Court comprehensively described direct communications between a lawyer and his client (or via third-party agents) to be subject to legal privilege if they are confidential and for the dominant purpose of seeking or giving legal advice on the client's legal position or rights ("legal advice privilege"). Also privileged are confidential communications between a lawyer and his client, non-professional agent or third party, made after litigation has been commenced or contemplated and for the sole or dominant purpose of advising in relation to, or seeking evidence or information for, such litigation ("litigation privilege").*

Prosecuting money laundering as a Statutory Offence

241. A possible impediment to effective prosecution of ML was brought to the attention of the evaluators during the onsite visit when they became aware of criminal cases regarding suspicions of customary law offences (e.g. obstruction of justice) where additional potential investigations of the money laundering component were not pursued and did not lead to a corresponding ML indictment. The reason for this as explained to the evaluators was the parallel system existing in Jersey where customary law offences are tried before a jury (unless a defendant consents to the matter being tried before the Inferior Number), and statutory offences (such as money laundering or terrorist financing) before the Inferior Number of the Royal Court⁴⁹ (professional judge accompanied by 2 Jurats⁵⁰).
242. The Jersey authorities assured the evaluators that the differing modes of trial should not be a reason for not pursuing an ML offence where it was in the public interest to do so. Nevertheless, as discussed during the onsite visit this has happened in the past, and the evaluation team

⁴⁹ *The Inferior Number of the Royal Court consists of a professional judge (i.e. the Bailiff, Deputy Bailiff or a Commissioner ("the Bailiff")) who sits as the sole judge of law (and costs). The Jurats, in all matters civil, criminal and mixed (other than cases tried before a jury) are the sole judges of fact. The Jurats also determine the sentence, fine or other sanction to be pronounced or imposed in all criminal and mixed causes. The Bailiff guides the Jurats on any legal points which may arise when they are deliberating and has a casting vote in the event that they are divided in opinion as to the facts or the sentence, fine or other sanction. Where in any other cause or matter in which only issues of law arise, these may be determined by the Bailiff sitting alone. (See Royal Court (Jersey) Law 1948 Articles 15 and 17).*

⁵⁰ *Jurats are distinguished members of the community who are elected to their post by an electoral college which is presided over by the Bailiff and whose voting membership consists of Jersey Advocates and Solicitors, Jurats, Parish Connétables and elected members of the States Assembly. Article 4 of the Royal Court (Jersey) Law 1948 sets out comprehensively the procedure for electing a Jurat. A Jurat must retire at the age of 72 although he or she may be called upon by the Bailiff to act in matter(s) until the age of 75 (Royal Court (Jersey) Law 1948, Article 9). A Jurat may only be dismissed, or resign, by an Order of Her Majesty in Council, on petition of the Royal Court*

considers it possible and reasonable that it may happen again in the future as the need for conducting 2 separate trials may indeed be a relevant *public interest* consideration.

243. This potentially restrictive legal obstacle preventing the joint prosecution of ML (as a statutory offence) with a customary law offence has been identified by the authorities, and steps are being taken to address it by virtue of amendments to the criminal procedure law. Nevertheless as to date this remains an issue raising some concern as to the effectiveness of the overall system, in the AML context.

2.1.2 Recommendations and comments

Recommendation 1

244. The technical deficiencies are comparatively minor and the evaluators welcome the speed with which the authorities responded to some of the evaluators' concerns.

245. While there are some important convictions for ML, it is important for the enhancement of the AML regime for more suspicions of money laundering to be investigated and subsequently more cases to be prosecuted where there is evidence of domestic abuse (including when predicate offences are committed abroad) of complex legal arrangements and structures, arising from proactive parallel financial investigations in Jersey.

246. It is thus recommended that Jersey authorities should :

- Amend the law so that the definition of "criminal property" covers property obtained through the commission of an offence also in cases where the property is not proceeds of crime derived from criminal conduct.
- Change criminal procedures to enable joint prosecution of customary law offences (e.g. obstruction of justice) together with statutory offences such as money laundering.

2.1.3 Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	LC	<u>Effectiveness</u> <ul style="list-style-type: none"> • ML cannot be tried together with a customary law offence; • Overall effectiveness concerns given the relatively limited number of money laundering cases (especially third party ML of proceeds generated from foreign criminality) considering the size and characteristics of Jersey's financial sector as an international financial centre.

2.2 **Criminalisation of the Financing of Terrorism (SR.II)**

2.2.1 Description and analysis

Special Recommendation II (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

247. The financing of terrorism was criminalized by Jersey in 2002. Two deficiencies were previously identified in the IMF report.

248. *Deficiency 1:* Article 2 of the Terrorism Law was found not to contain a reference to international organizations. This deficiency has been addressed in the Terrorism Law (Article 2(1)(b)(i)⁵¹) which was amended and now the definition of terrorism explicitly includes a reference to the use or threat of action where it is designed to influence an international organization.

249. *Deficiency 2:* The definition of “terrorism” in Article 2 of the Terrorism Law was found not to extend to all terrorism offences as defined in the nine conventions and protocols listed in the annex to the FT Convention. This deficiency has now been addressed. The Proceeds of Crime and Terrorism Law now 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. See Articles 3 and 21 of the Proceeds of Crime and Terrorism Law which insert a new Article 2 and Schedule 10 respectively into the Terrorism Law.⁵²

⁵¹ “(b) the use or threat is designed to influence the States, the government of any other place or country or an international organization or to intimidate the public or a section of the public; and”.

⁵² *Terrorism (Jersey) Law 2002 Article 2 Meaning of “terrorism”*

(1) In this Law, “terrorism” means –

(a) an act which constitutes an offence under the laws of Jersey and is listed in Schedule 10 to this Law; or

(b) an act falling within paragraph (2), where the act or threat of such an act is intended or may reasonably be regarded as intended –

(i) to influence, coerce or compel the States of Jersey or the government of any other place or country, or an international organization, to do or refrain from doing any act, or

(ii) to intimidate the public or a section of the public,

and the act is done or the threat is made for the purpose of advancing a political, racial, religious or ideological cause.

(2) An act falls within this paragraph if it is an act other than one referred to in paragraph (1)(a) which –

(a) is intended to cause the death of, or serious injury to, a person not taking an active part in hostilities in a situation of armed conflict;

(b) creates a serious risk to the health or safety of the public or a section of the public;

(c) involves serious damage to property;

(d) seriously disrupts or seriously interferes with any electronic system or the provision of any service directly relating to communications infrastructure, banking and financial services, public utilities, transportation or other infrastructure;

(e) seriously disrupts or seriously interferes with the provision of emergency police, fire and rescue or medical services; or

(f) involves prejudice to national security or national defence.

(3) An act or the threat of an act falling within paragraph (2) which involves the use of firearms or explosives is terrorism whether or not sub-paragraph (i) or (ii) of paragraph (1)(b) is satisfied.

(4) For the purposes of this Article –

(a) a reference to an act includes an act carried out in a place or country other than Jersey;

(b) a reference to a person or to property is a reference to any person or to property wherever situated;

(c) a reference to the public includes reference to the public in a place or country other than Jersey.

Detailed In schedule 10 are Terrorism Offences :

1 Aviation Security (Jersey) Order 1993

(a) An offence under any of sections 1, 2, 3, 4 or 6 of the Aviation Security Act 1982 as extended to Jersey by Article 2(1) of the Aviation Security (Jersey) Order 1993.

(b) An offence under section 1 of the Aviation and Maritime Security Act 1990 as extended to Jersey by Article 2(2) of that Order.

2 Internationally Protected Persons Act 1978 (Jersey) Order 1979

An offence under section 1 of the Internationally Protected Persons Act 1978 as extended to Jersey by Article 3 of the Internationally Protected Persons Act 1978 (Jersey) Order 1979.

3 Nuclear Material (Offences) Act 1983 (Jersey) Order 1991

An offence under section 1 or 2 of the Nuclear Material (Offences) Act 1983 as extended to Jersey by Article 2 of the Nuclear Material (Offences) Act 1983 (Jersey) Order 1991.

4 Maritime Security (Jersey) Order 1996

An offence under any of sections 9 to 14 of the Aviation and Maritime Security Act 1990 as extended to Jersey by Article 2 of the Maritime Security (Jersey) Order 1996.

5 Taking of Hostages (Jersey) Order 1982

An offence under section 1 of the Taking of Hostages Act 1982 as extended to Jersey by Article 3 of the Taking of Hostages (Jersey) Order 1982.

250. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and associated “Fixed Platform Protocol” were extended to Jersey on 17 October 2014. The offences in the Protocol are implemented in Jersey law by the Maritime Security (Jersey) Order 2014, which extends to Jersey sections 9 to 43, 45 to 46, and 50 of, and Schedule 2 to, the Aviation and Maritime Security Act 1990 as amended, subject to certain exceptions, adaptations and modifications, as follows:

8	Protocol (to Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation) for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf Rome, 1988	2.1	Offence if person unlawfully and intentionally:	The Maritime Security (Jersey) Order 2014
		2.1(a)	-Seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation	Section 10(1)
		2.1(b)	-Performs an act of violence against a person on board fixed platform if that act is likely to endanger the platform’s safety	Section 11(1)(c)
		2.1(c)	-destroying a fixed platform or causing damage to fixed platform which is likely to endanger its safety	Section 11(1)(a) & (b)
		2.1(d)	-Places or causes to be placed on a platform a device or substance which is likely to destroy the platform or endanger its safety.	Section 11(2)
		2.1(e)	Injuring or killing any person in connection with commission or the attempted commission of any of the above offences.	Section 14
		2.2(c)	Offence to threaten, with or without condition, aimed at compelling a natural/juridical person to commit or refrain from an act, to commit any of the offences in 2.1(a) and (b) above, if that threat likely to endanger the safety of the fixed platform	Section 13(1)

251. The offences of attempt (Article 2.2(a) of the Protocol) and abetting or complicity (Article 2.2(b)) are implemented in Jersey law by Article 1 of the Criminal Offences (Jersey) Law 2009.

252. The offences of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, (The Montreal Protocol 1988) are similarly implemented in Jersey law by the Aviation Security (Jersey) Order 1993 which extends to Jersey section 1 and 50 of the Aviation and Maritime Security Act 1990, subject to certain exceptions, adaptations and modifications. The Montreal Protocol 1988 was extended to Jersey on 3 September 2013.

253. 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 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. The Jersey authorities assert that whilst the provision adds an element not covered 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 is sufficiently broad so as not to adversely impact Jersey's ability to prosecute successfully a FT offence (see Article 3 of the Proceeds of Crime and Terrorism Law which inserts a new Article 2(1)(b) into the Terrorism Law).

Legal framework

254. Terrorist financing is criminalized mostly in line with international standards, yet some shortcomings remained at the time of the onsite visit with regard to the material elements of the offence ("converting" and the definition of "property").

Criminalization of financing of terrorism (c.II.1)

255. FT is criminalized reasonably consistently with Article 2 of the Terrorist Financing Convention – Articles 2, 3 and Articles 15-16 of the Terrorism Law, which now read:

15 Use and possession etc. of property for purposes of terrorism

- (1) It is an offence for a person to use property for the purposes of terrorism or for the support of a terrorist entity.*
- (2) It is an offence for a person –*
 - (a) to possess property;*
 - (b) to provide, or invite another to provide, property or a financial service; or*
 - (c) to collect or receive property, intending that the property or service be used, or knowing, suspecting, or having reasonable grounds to suspect that it may be used, for the purposes of terrorism or for the support of a terrorist entity.*
- (3) In this Article –*
 - (a) reference to the use of property includes use in whole or in part, directly or indirectly;*
 - (b) reference to the provision of property or a financial service is a reference to the property or service being given, lent, or otherwise made available, whether or not for consideration; and*
 - (c) "support of a terrorist entity" includes, but is not limited to, support by way of providing or subsidizing educational or other day-to-day living expenses.*
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or to both.*

16 Dealing with terrorist property

- (1) It is an offence for a person to do any act (including but not limited to an act listed in paragraph (3)) which facilitates the retention or control of terrorist property.*
- (2) It is a defence for a person charged with an offence under paragraph (1) to prove that the person did not know or suspect or had no reasonable grounds to suspect that –*
 - (a) the purpose of the act was to facilitate the retention or control of terrorist property; or*
 - (b) the property in question was terrorist property.*
- (3) The following acts are those mentioned in paragraph (1) –*
 - (a) concealing or disguising the property;*
 - (b) removing the property from Jersey;*
 - (c) transferring the property to nominees.*

- (4) *In paragraph (1), reference to doing an act includes reference to omitting to do something.*
- (5) *In paragraph (3)(a), reference to concealing or disguising property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.*
- (6) *A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or to both.*

256. Article 1(1) of the Terrorism Law defines “property” as including all property whether movable or immovable, vested or contingent and whether situated in Jersey or elsewhere. However the current definition falls short of the conventions definition of “funds” and seems to not include assets “however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.”

257. As described above with regard to Recommendation 1 this issue was a topic for discussions with the local authorities. The evaluators were therefore pleased when informed of the initiative by the Jersey authorities to have made some legislative amendments to the Terrorism Law after the on-site visit. These were adopted by the States Assembly on the 10th of March, and presented to Her Majesty’s Privy Council for consideration and approval on 20th of March 2015. Thus the authorities have addressed (so far as is in their power) the shortcomings within the timescales of this report⁵³.

258. The FT offences (Articles 15 and 16 above) do not require that funds (i) were actually used to carry out or attempt a terrorist act(s) or (ii) be linked to a specific terrorist act(s). This is evidenced by the fact the definition of “terrorism” in Article 2 of the Terrorism Law refers to the “use or threat” of specified action.

259. The definition of “terrorist entity” does not include a “*proscribed organization*”. It is therefore unclear whether financing a “proscribed organization” or any individual member in such an organization (Part 2 of the Terrorism Law) would constitute a crime under Article 15 of the Terrorism Law. In discussions with the Jersey authorities they assured the evaluators that financing a “proscribed organization” would be considered an offence committed pursuant to Article 15 since it is an offence to use (directly or indirectly) possess or provide property if the person knows or suspects or has reasonable grounds to suspect that the property may be used for the purposes of terrorism or for the support of a terrorist entity. In their opinion the definition of “terrorist entity” includes such an organization (proscribed or not). It is noted that Article 13 of the Terrorism Law states that it is a separate offence to invite support for a proscribed organization. This does not preclude charging the suspect with an Article 15 offence.

Predicate offence for money laundering (c.II.2)

260. The Jersey authorities assert that TF is a predicate offence under the definition of “money laundering” in Article 1(1) of the Proceeds of Crime Law as amended by the Proceeds of Crime and Terrorism Law, which defines the offences under Articles 15 and 16 of the Terrorism Law as money laundering.

261. Nevertheless Articles 30 and 31 of the Proceeds of Crime Law limit the offences to “criminal property” it therefore is doubtful whether terrorist financing is in fact a predicate offence to money laundering when not involving “criminal property” as defined.

262. This is especially relevant because, as described above, the definition of “criminal property” in Article 29 (property which “constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly.”) is somewhat short of the definition in Article 1(e) of the Palermo convention requiring “proceeds of crime” to mean any

⁵³ The Terrorism (Amendment No. 4) (Jersey) Law 2015 came into force after receipt of the Royal Assent on 20 June 2015.

property "derived from or obtained, directly or indirectly, through the commission of an offence;" as a result the law does not necessarily cover property obtained through the commission of an offence (but which is not proceeds of crime derived from criminal conduct).

263. In conclusion, it is unclear whether laundering terrorist property, or property involved in terror financing, which is not "*criminal property*" (e.g. legitimate funds collected for the use of terror entities) would constitute a crime under Articles 30 and 31 of the Proceeds of Crime Law.

Jurisdiction for Terrorist financing offence (c.II.3)

264. The terrorist financing offence applies, regardless of whether the person alleged to have committed the offence is in Jersey or abroad or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur (see Article 2(4) of the definition of "terrorism" in the Terrorism Law as amended by the Proceeds of Crime and Terrorism Law).

The mental element of the FT (applying c.2.2 in R.2)

265. Customary law as practiced in Jersey allows the intentional element of the offence of TF as any other offence to be inferred from objective factual circumstances.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

266. Criminal liability for TF extends in Jersey to legal persons - See Article 15 and the definition of "terrorism" in Article 2 of the Terrorism Law and the Schedule to the Interpretation (Jersey) Law 1954 which defines "person" to include any body of persons corporate or unincorporated. The possibility of criminal proceedings does not preclude parallel civil liability but criminal proceedings would always take priority under the customary law maxim of *le criminel tient le civil*.

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

267. A person guilty of an offence under Articles 15 or 16 of the Terrorism Law is liable to imprisonment for a term not exceeding 14 years or to a fine, or to both.

Recommendation 32 (terrorist financing investigation/prosecution data)

268. At the time of the on-site visit there were no TF related investigations, prosecutions or convictions.

Effectiveness

269. The FT offence has so far not 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.

Legal Privilege

270. As discussed above with regard to Recommendation 1, concerns were raised by the evaluators with regard to legal privilege in this context. The evaluators were pleased when informed after the visit of the initiative by the Jersey authorities to have made some legislative amendments to the Terrorism law, but equally disappointed that these did not take effect on or before 24 March 2015. Though adopted by the States Assembly on the 10th of March, these were presented to Her Majesty's Privy Council for consideration and approval on 20th of March 2015. Thus the

authorities have addressed (so far as is in their power) the shortcomings within the timescales of this report.⁵⁴

271. Article 21 of the Terrorism Law (Failure to disclose: financial institutions), reads :

"(8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him or her –

- (a) by (or by a representative of) a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;*
- (b) by (or by a representative of) a person seeking legal advice from the adviser; or*
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.*

(9) But paragraph (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose."

272. In addition, Schedule 5 to that law titled "(Article 31) Terrorist Investigations: Information Searches" reads:

"11 Interpretation

(1) In this Schedule, "items subject to legal privilege" means, subject to paragraph (2) –

- (a) communications between a professional legal adviser ("A") and the adviser's client ("B") or any person representing B ("C"), made in connection with the giving of legal advice by A to B;*
- (b) communications between A, B or C or between A, B or C and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;*
- (c) items enclosed with or referred to in any such communications and made in connection with the giving of legal advice, or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when such items are in the possession of a person who is entitled to possession of them.*

(2) An item cannot be subject to legal privilege if it is held with the intention of furthering a criminal purpose.

(3) In this Schedule, "dwelling" means a building or part of a building used as a dwelling, and includes a vehicle which is habitually stationary and is so used."⁵⁵

273. While discussing this article with the Jersey authorities no explanation was given as to the reason or motivation for including these definitions, which all seem to be possibly wider than the customary law definition of *legal privilege*, or to the impact it may have on the effectiveness of the AML/CFT regime. No explanation was given as to the variation of the definitions and to the possible negative impact this may have on developing jurisprudence.

274. The concept of "privilege" seems to appear in 2 separate contexts: failure to disclose knowledge or suspicion of money laundering, –and Legal Privilege in the context of exemptions from production of evidence during investigations relating to proceeds of criminal conduct.

275. In discussions with the Jersey authorities they claimed that these definitions were more or less in line with the customary law ones both with regard to "litigation privilege" and "legal advice privilege" (as prescribed by the House of Lords in *Three Rivers DC* [2003] QB 1556). The Jersey authorities pointed out that the Jersey definition did not adopt the narrower test adopted in *"Three rivers"* namely that documents would be considered to be covered by privilege only where documents were created for the *dominant purpose* of obtaining legal advice.

⁵⁴ *The Terrorism (Amendment No. 4) (Jersey) Law 2015 came into force on 20 June 2015.*

⁵⁵ *In Schedule 5 of the Terrorism (Jersey) Law 2002, paragraphs 11(1) and 11(2) were deleted by the Terrorism (Amendment No. 4) (Jersey) Law 2015 which came into force on 20 June 2015.*

276. In the evaluators opinion reference to legal privilege with regard to the offence of *"failure to disclose"* is of course legitimate under the FATF standards⁵⁶, more surprising is the restrictive definition of *items subject to legal privilege* when applied to investigations and production of evidence⁵⁷. Especially confusing is the fact that the exemption (paragraph 11 of Schedule 5 to the Terrorism Law) for privileged information used for *"the intention of furthering a criminal purpose"* seems to apply only to *"objects"* and not to *"communications"*.
277. In the onsite discussions, the evaluators were assured that there was no evidence of abuse of legal professional privilege, though some of the several and different definitions of legal professional privilege in Jersey law (both in the proceeds of crime and the anti-terror legislation), seem as discussed above to be wider than the customary law definition. In these discussions the evaluators expressed the view that these definitions should be removed as they might potentially have a negative impact on the effective investigation and prosecution of money laundering.

Prosecuting Terror Financing as a Statutory Offence

278. As described earlier under R.1, another possible impediment on effective prosecution of ML and TF could be the parallel system which exists in Jersey, where customary law offences are tried before a jury, (unless a defendant consents to the matter being tried before the Inferior Number), and statutory offences (such as money laundering or terrorist financing) before the Inferior Number of the Royal Court (professional judge accompanied by 2 Jurats). This was brought to the attention of the evaluators during the onsite visit.
279. This potentially restrictive legal obstacle preventing the joint trial of TF (as a statutory offence) with a customary law offence has been identified by the authorities, and steps are being taken to remove this obstacle. Nevertheless as to date this remains an issue raising some concern as to the effectiveness of the overall system, in the CFT context.

⁵⁶ In the UK POCA section 330 criminalizes failure to disclose potential suspicion of money laundering and makes reference to *"privileged circumstances"* as following:

According to section 330(6) a person does not commit an offence under this section if—

"...

(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances;"

Article 330(10) defines Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

"(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings".

(11)

But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose

⁵⁷ In the UK POCA section 348 refers to the common law definition of legal privilege with regard to production orders and reads -

"348. Further provisions

A production order does not require a person to produce, or give access to, privileged material.

Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court."

The Jersey authorities have made some Legislative amendments to the Proceeds of Crime Law after the on-site visit which took effect on or before 24 March 2015.

Definition of *"items subject to legal privilege"*

Regulation 1(a) deletes the definition of *"items subject to legal privilege"* from the Proceeds of Crime Law.

By removing the definition from Article 1(1) of the Proceeds of Crime Law of *"items subject to legal privilege"*, any references to legal privilege in that Law shall have the meaning as acquired by the customary law of Jersey. In *Bene Ltd. v VAR Hanson & Partners* [1997] JLR N10a, the Royal Court comprehensively described direct communications between a lawyer and his client (or via third-party agents) to be subject to legal privilege if they are confidential and for the dominant purpose of seeking or giving legal advice on the client's legal position or rights (*"legal advice privilege"*). Also privileged are confidential communications between a lawyer and his client, non-professional agent or third party, made after litigation has been commenced or contemplated and for the sole or dominant purpose of advising in relation to, or seeking evidence or information for, such litigation (*"litigation privilege"*).

2.2.2 Recommendations and comments

Special Recommendation II

280. At the time of the onsite visit, the evaluation team considered that it was necessary to amend the law to clarify certain aspects, as noted above, with respect to the definition of property⁵⁸ and of legal privilege. However, these are not detailed for the purpose of the action plan, given that in the meantime legislative amendments have been adopted on the 10th of March 2015 and were communicated by the Jersey authorities for Royal Assent on 20 March 2015.
281. Jersey should change criminal procedures to enable joint prosecution of customary law offences (eg. obstruction of justice) together with statutory offences, such as terror financing.
282. Jersey should consider the UK POCA definitions of property in sections 340(10)(a) and (d) as they contain useful clarifications which may be of value in Jersey.
283. No terror financing cases have so far been investigated or prosecuted, even though several SARs have been found to be TF - related (which is unsurprising, considering the risk posed by the extent of financial services offered by Jersey financial institutions and DNFBPS in various high risk areas). The Jersey authorities are encouraged to take a close look at this sensitive issue and examine the possibilities of enhancing the effective investigation of such suspicions.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none"> The use of lawful property for terrorist financing purposes is an offence under Jersey law but not a predicate offence to money laundering when not involving "criminal property" as defined. <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> As it has not been tested in practice, it remains unclear whether financing a "proscribed organization" (Part 2 of the Terrorism Law) would be covered under Article 15 of the Terrorism Law.

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

2.3.1 Description and analysis

Recommendation 3 (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

284. The previous evaluation had rated Recommendation 3 Largely Compliant and had found the Jersey seizure and confiscation legislative framework to be generally adequate and to reflect a clear awareness by the authorities of the importance of depriving criminals of their illegal assets. However, the Jersey authorities were encouraged to reinforce their legal framework to address the following issues:
- a) The deficiencies in respect of the scope of the ML and FT offences undermine the quality of the criminal confiscation regime;

⁵⁸ As noted earlier, "property" has been amended in the Terrorism (Amendment no.4) (Jersey) Law 2015, which entered into force on 20 June 2015.

- b) There is a restriction that equivalent value seizure is possible only after formal proceedings have been instituted or are about to be instituted;
- c) Provision should be made under the Terrorism Law for restraint and confiscation of equivalent value.

285. The implementation of the Proceeds of Crime and Terrorism Law has not changed how confiscation, freezing and seizing works in practice in Jersey. Yet the Jersey authorities have addressed deficiency no. 2 to eliminate the restriction that equivalent value seizure only being possible after formal proceedings have been instituted or are about to be instituted. Articles 27 and 28 of the Proceeds of Crime and Terrorism Law amended the Proceeds of Crime Law to allow a saisie judiciaire to take place from an earlier stage (when a criminal investigation has been started in Jersey in respect of alleged criminal conduct). In addition, provisions in respect of confiscation, seizure and freezing that were in the Drug Trafficking Offences Law have now been brought within the scope of the Proceeds of Crime Law by the Proceeds of Crime and Terrorism Law. Nevertheless some concerns regarding the scope of the ML and FT offences may still undermine the quality of the criminal confiscation regime.

Legal framework

286. The evaluators have identified some potential shortcomings in the confiscation powers, especially with regard to "value confiscation" of criminal assets given as gifts, or settled (both before and after the criminal conduct) in complex legal structures to which offenders are beneficially entitled. The evaluators were also concerned as to whether the current provisional measures regime is fully geared to deal with all potential money laundering in the local situation, given a recent decision in a case involving a discretionary trust (where the use of wider definitions of criminal property may have assisted the prosecution).

287. There is no single statutory instrument covering all instances of seizure and confiscation of criminal assets or proceeds in general. Relevant provisions are found in particular in two Laws. The legislation covering: seizure and confiscation of proceeds of crime in respect of all offences, including ML and FT, is in the Proceeds of Crime Law; and the freezing and forfeiture of terrorism related assets is in the Terrorism Law. The relevant legislation is the :

- Proceeds of Crime Law
- Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 (the "**Enforcement of Confiscation Orders Regulations**")
- Terrorism Law
- Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008
- Criminal Justice (International Co-operation) (Jersey) Law 2001
- Criminal Justice (International Co-operation) (Jersey) Regulations 2008
- Proceeds of Crime (Cash Seizure) (Jersey) Law 2008
- Civil Asset Recovery (International Cooperation) (Jersey) Law 2007
- Investigation of Fraud (Jersey) Law 1991
- Crime (Transnational Organized Crime) (Jersey) Law 2008
- Criminal Justice (Forfeiture Orders) (Jersey) Law 2001

Confiscation of property (c.3.1)

288. Laws provide for the confiscation, following conviction, of property that has been laundered –

- a) Article 3 and Articles 38 and 39 of the Proceeds of Crime Law along with the Enforcement of Confiscation Orders Regulations (in respect of external confiscation orders).

- b) Article 2 and Article 27 of and paragraphs 1 and 11 of Schedule 3 to the Terrorism Law (as amended by Proceeds of Crime and Terrorism Law), along with the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 (in respect of external forfeiture orders).
289. Jersey is also able to assist other jurisdictions with the enforcement of civil asset recovery orders made in other jurisdictions under Part 3 of Civil Asset Recovery (International Cooperation) (Jersey) Law 2007.
290. Under Article 4 of the Proceeds of Crime Law, the amount which the defendant is required by a confiscation order to pay shall be the amount assessed by the Court to be the value of the defendant's benefit from the relevant criminal conduct. If the Court is satisfied that the amount which might be realised at the time when the confiscation order is made is less than the assessed value, the amount the defendant is required to pay shall be the amount which appears to the Court might be realised. For a recent judgment as to how this works in practice, see *AG v Michel and Gallichan* [2007] JRC 203. The forfeiture provisions contained in Article 27 of the Terrorism Law relate to the specific property in question. "Criminal conduct" (as defined in Article 1(1) of the Proceeds of Crime Law) means conduct, which constitutes an offence which renders a person liable on conviction to one or more years imprisonment, or if it occurs outside Jersey, would have constituted such an offence if occurring in Jersey.
291. Furthermore, Article 2 of the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001 provides the courts with the power to deprive an offender of property used or intended for use for the purpose of crime. Article 3 provides for the application of the proceeds of that forfeited property.
292. The Drug Trafficking Offences Law permitted the Royal Court to confiscate property not just in relation to the criminal conduct directly relevant to the conviction itself but any other drug trafficking offending regardless of when or where it took place [the previous conduct provisions]. That is the legal basis on which the Royal Court ordered that Curtis Warren pay a confiscation order of £198 million on 5th November 2013 – reflecting his worldwide trade in cocaine and other drugs from 1991 until 2007.
293. Whereas the Drug Trafficking Offences Law has been repealed the previous conduct provisions have not found their way into the amended Proceeds of Crime Law. The original Proceeds of Crime Law had no previous conduct provisions at all⁵⁹.
294. In contrast, the UK Proceeds of Crime Act 2002 (the "**2002 UK Act**") introduced previous conduct provisions for the purposes of confiscation in England and Wales. Pursuant to the 2002 UK Act, the court can determine if a defendant has engaged in a criminal lifestyle. If so, the defendant's benefit for the purposes of making the confiscation order is not limited to a consideration of the conduct that resulted in the conviction but extends to an analysis of any criminal conduct that took place at any time: see sections 6 and 75. In the event of a finding of criminal lifestyle, the court has wide powers to set aside gifts, whenever they were made.
295. According to Jersey law at present, gifts made in general or specifically into a trust can be set aside if those gifts were made only after the relevant offending; see Article 2(1) and 2(9) of the Proceeds of Crime Law. On this basis, the gifts made by the defendant into the trust after his offending are frozen and are available for confiscation. However, when the defendant made gifts prior to his (proven) offending those assets are not capable of being frozen.
296. The Jersey authorities agree that if the Royal Court had been able to apply previous conduct provisions similar to those found in the 2002 UK Act then the Court may have been able to freeze all the gifts that were made into the Trust by the defendant, including those that were made prior to the offending. They agreed that there is merit in considering a further amendment to the

⁵⁹ Nor did the UK Criminal Justice Act 1988 on which the Proceeds of Crime Law was based.

Proceeds of Crime Law in order to include previous conduct provisions akin to those found in the 2002 UK Act.

297. Concerns remain as to the ability of competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, which do not represent a benefit by the offender proven in the court.
298. Another reason for concern is the extent of value confiscation with regard to gifts. In respect of Part 2 of the Proceeds of Crime Law, Article 2 of the Proceeds of Crime Law defines "realisable property". Specifically, Article 2(9) states:

A gift (including a gift made before the commencement of this Article) is caught by Part 2 if –
"(a) It was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate;
and
(b) The Court considers it appropriate in all the circumstances to take the gift into account"
299. A ruling in a recent case which is further discussed beneath illustrates the evaluator's concern as to the ability to confiscate gifts made before the commission of the offence. The authorities have indicated that it has always been apparent that gifts made before offence could not be confiscated because this is the way Article 2(9) Proceeds of Crime Law and 2(9) as modified for external confiscation orders are framed. The issue confirmed by the Royal Court was that a beneficiary of a discretionary trust was not beneficially entitled to assets in the trust for the purposes of the Proceeds of Crime Law.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

300. Laws provide for the freezing or seizure of assets (by *Saisies Judiciaires*) subject to confiscation where proceedings have been instituted against a defendant or where the court is satisfied proceedings are to be instituted, and when a criminal investigation has been started in Jersey in respect of alleged criminal conduct – Articles 15 and 16 of the Proceeds of Crime Law as amended by the Proceeds of Crime and Terrorism Law.
301. Under Article 27(5) of and paragraphs 3 to 6 of Schedule 3 to the Terrorism Law (as amended by the Proceeds of Crime and Terrorism Law) a restraint order can be obtained if it appears a forfeiture order may be made and when proceedings have been instituted against a person for a terrorist funding offence or a criminal investigation has started.
302. Tainted cash can be seized and detained in accordance with Articles 4 to 6 of the Cash Seizure Law.
303. "*Saisies judiciaires*" and restraint orders can now also be made where proceedings have been instituted against a defendant or where the court is satisfied proceedings are to be instituted in another country or territory so as to freeze or seize assets in Jersey – Articles 38 and 39 of the Proceeds of Crime Law (as amended by the Proceeds of Crime and Terrorism Law) and the Enforcement of Confiscation Orders Regulations, Article 27(5) of and paragraph 11 of Schedule 3 to the Terrorism Law (as amended by the Proceeds of Crime and Terrorism Law) and the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008, and Article 7 of the Criminal Justice (International Cooperation) Law and the Criminal Justice (International Cooperation) (Jersey) Regulations 2008.
304. The Enforcement of Confiscation Orders Regulations modify the Proceeds of Crime Law as it applies to external confiscation orders i.e. confiscation orders made by courts outside Jersey. The Schedule to the Enforcement of Confiscation Orders Regulations sets out the amendments to the

Proceeds of Crime Law. In its modified form (the “**modified Proceeds of Crime Law**”) the relevant Articles for our purposes are as follows:-

“15 Cases in which saisies judiciaires may be made

- (1) *The powers conferred on the Court by Article 16 are exercisable where –*
 - (a) *proceedings have been instituted in a country or territory outside Jersey and have not been concluded, and -*
 - (i) *an external confiscation order has been made in the proceedings, or*
 - (ii) *it appears to the Court that there are reasonable grounds for believing that such an order will be made in the proceedings;*
 - or*
 - (b) *it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an external confiscation order may be made in those proceedings.*
- (2) *Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the Order if proceedings have not been instituted within such time as the Court considers reasonable.*

16 Saisies judiciaires

- (1) *The Court may, subject to such conditions and exceptions as may be specified in it, make an order (in this Part referred to as a saisie judiciaire) on an application made by or on behalf of the Attorney General on behalf of the government of a country or territory outside Jersey.*
- (2) *An application for a saisie judiciaire may be made ex parte to the Bailiff in chambers.*
- (3) *A saisie judiciaire shall provide for notice to be given to any person affected by the order.*
- (4) *Subject to paragraph (5), on the making of a saisie judiciaire –*
 - (a) *all the realisable property held by the defendant in Jersey shall vest in the Viscount;*
 - (b) *any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;*
 - (c) *any specified person may be prohibited from dealing with any realisable property transferred to the person after the making of the order,*

and the Viscount shall have the duty to take possession of and, in accordance with the Court’s directions, to manage or otherwise deal with any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount.
- (5) *...*

305. Article 2 of the modified Proceeds of Crime Law defines “**realisable property**”:

“2 Meanings of expressions relating to realisable property

- (1) *In this Law, “realisable property” means –*
 - (a) *in relation to an external confiscation order in respect of specified property, the property that is specified in the order; and*
 - (b) *in any other case –*
 - (i) *any property held by the defendant,*
 - (ii) *any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and*
 - (iii) *any property to which the defendant is beneficially entitled.*

...

(9) *A gift (including a gift made before the commencement of the Enforcement Regulations) is caught by this Law if:-*

- (a) *it was made by the defendant at any time after the conduct to which the external confiscation order relates; and*
- (b) *the Court considers it appropriate in all the circumstances to take the gift into account."*

306. The evaluators remain concerned as to the effective application of these articles with regard to legal structures common in Jersey and especially trusts as the definitions set out have not been harmonized with the relevant trust law.

307. It seems that whenever proceedings against the settlor of a trust, for instance, have been instituted in Jersey or anywhere else for criminal offences or money laundering, and there are reasonable grounds for believing that an external confiscation order may be made in those proceedings, a "*saisie judiciaire*" may be granted against the assets of the trust.

308. Nevertheless, assets contributed to a discretionary trust before the criminal conduct to which the external confiscation order relates, are not gifts within the definition in Article 2(9) of the Proceeds of Crime Law as modified by the External Confiscation Regulations. They also may not be "realisable property" for the purposes of Article 16(4) of the modified Proceeds of Crime Law, and a *saisie judiciaire* can of course only be applied to "realisable property". This is subject to two caveats, (i) where a beneficiary has an entitlement to income or capital the gift will still be realisable property, and (ii) where he has made a transaction at an undervalue by making the gift into trust within 5 years before being declared bankrupt (*en désastre*) under the Bankruptcy (*Désastre*) (Jersey) Law 1990 then the gift can be set aside.

309. The settlor of a discretionary trust (who is one of the beneficiaries of such a trust) is not generally "beneficially entitled" to the assets of the trust, so that the trust assets are usually not "realisable property" within Article 2(1)(b)(iii) of the Proceeds of Crime Law as modified by the External Confiscation Regulations.

310. In a recent case it was held that a potential beneficiary under a discretionary trust (whether technically a beneficiary of a discretionary trust, or an object of a discretionary power of appointment) was not to be considered '*beneficially entitled*' to the property which is the subject of the trust or power of appointment. In this case the court considered that a "*saisie judiciaire*" would not be appropriate, as ultimately confiscation of all trust assets simply because the defendant was one of several people with a discretionary interest in the trust would be unfair to other potential beneficiaries.

311. In discussion of this decision, the Jersey authorities emphasized that no change to the definition of "realisable property" was planned to include a beneficial interest in a discretionary trust, as such a proposal, in their view, would contradict both principles of trust law and fundamental human rights. The evaluators agree that a beneficial interest in a discretionary trust should not, as such, automatically be considered realisable property. Nevertheless they consider that there might be circumstances where (eg by examination of the other evidence, such as the settlor's letter of wishes) it may be appropriate to make inroads into these principles. For the purposes of provisional measures at least to preserve the position in the event that the trust assets may ultimately be found, on the evidence, to be realisable assets in the circumstances of a particular case. The evaluators have been informed that the Jersey authorities are actively considering appropriate changes to legislation to alleviate this issue.

312. Article 27(3) of the Terrorism Law provides that the court may order the forfeiture of any property which, wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of an offence.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

313. See Article 16(2) of the Proceeds of Crime Law and paragraph 4(b) of Schedule 3, to the Terrorism Law.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

314. There are adequate powers to enable the identification and tracing of property suspected of being the proceeds of crime. Those powers are:

- *Production orders* – Article 40 of the Proceeds of Crime Law, and Article 31 of and paragraph 4 of Schedule 5 to the Terrorism Law.
- *Search powers* – Article 41 of the Proceeds of Crime Law, Article 31 of and paragraphs 1 to 3 and 6 to 10 of Schedule 5 to the Terrorism Law, Article 3 of the Cash Seizure Law, and Article 6 of the Criminal Justice (International Cooperation) Law.
- *Financial information orders* – Article 41A of and Part 1 of Schedule 3 to the Proceeds of Crime Law, and Article 32 of and Schedule 6 to the Terrorism Law.
- *Account monitoring orders* – Article 41A of and Part 2 of Schedule 3 to the Proceeds of Crime Law, and Article 33 of and Schedule 7 to the Terrorism Law.
- *Attorney General's powers* – Article 5 of the Criminal Justice (International Cooperation) Law and Article 2 of the Investigation of Fraud Law.
- *Commission powers* – in order to complete its supervisory functions and also to assist other agencies a designated supervisory body is able to require the provision of information and documents under Article 30 of the Supervisory Bodies Law, to conduct investigations under Article 31 of the Supervisory Bodies Law, and, with appropriate authority, to enter and search premises under Article 32 of the Supervisory Bodies Law. Similar powers are also seen, in the regulatory laws.

Protection of bona fide third parties (c.3.5)

315. The rights of bona fide third parties are protected consistently with the standards provided in the Palermo Convention – see Article 16(7) of the Proceeds of Crime Law, Article 27(4) of and paragraph 5 of Schedule 3 to the Terrorism Law and Article 11 of the Cash Seizure Law.

316. Furthermore, under the civil procedure rules (Royal Court Rule 6/10) a third party can intervene in proceedings and assert legal rights over property.

317. Subject to third party rights, Article 2(1) of the Proceeds of Crime Law provides that “*realisable property*” means (a) any property held by the defendant (b) any property held by a person to whom the defendant has directly or indirectly made a gift and (c) any property to which the defendant is beneficially entitled. Gifts are caught if they fall within the definition in Article 2(9) of the Proceeds of Crime Law. Article 27 of the Terrorism Law envisages forfeiting property belonging to another as Article 27(4) allows for a person who claims to be the owner or otherwise interested in anything forfeited with an opportunity to be heard before the Court before the making of an order.

Power to void actions (c.3.6)

318. As a matter of customary law the courts will void contracts contrary to public policy – *Basden Hotels Ltd v Dormy Hotel Ltd* 1968 JLR 911.

319. Every contract made for or about any matter or thing which is prohibited or made unlawful by statute is a void contract – *Jameson (T.W.) Ltd v Cumming Butler* 1981 J.J. 18...

Additional elements (c.3.7)

a)

320. Following conviction, laws do provide for the confiscation of assets of organisations that are primarily criminal in nature:

- Article 3 and Articles 38 and 39 of the Proceeds of Crime Law along with the Enforcement of Confiscation Orders Regulations (in respect of external confiscation orders).
- Article 2 and Article 27 of and paragraphs 1 and 11 of Schedule 3 to the Terrorism Law along with the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 (in respect of external forfeiture orders).

321. Furthermore, under Article 2 of the Crime (Transnational Organized Crime) (Jersey) Law 2008, a person commits an offence, punishable with up to 5 years imprisonment, if he or she –

- participates in a criminal organization, knowing that it is a criminal organization; and*
- knows, or is reckless as to whether, his or her participation contributes, or may contribute, to the occurrence of a serious offence against the law of a State.*

322. Committing the offence contained in Article 2 of the Crime (Transnational Organized Crime) (Jersey) Law 2008 amounts to “*criminal conduct*” under the Proceeds of Crime Law.

b)

323. Tainted cash can be forfeited by civil means under the Cash Seizure Law. Civil asset recovery orders obtained in other countries and territories can now be enforced in Jersey under the Civil Asset Recovery (International Cooperation) Law.

c)

324. By virtue of the assumptions contained in Article 5(4)-(6) of the Proceeds of Crime Law the offender is required to demonstrate the lawful origin of property.

Recommendation 32 (statistics)

325. The authorities keep detailed statistics on this issue. The following data has been provided in this respect:

2009										
	Property frozen		Property seized (ongoing)		Property seized (in calendar year)		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
ML-non-conviction-based	n/a	n/a	2	18,352,345 ⁶⁰	n/a	n/a	n/a	n/a	n/a	n/a
Underlying predicate offences where applicable	n/a	n/a	2	18,352,345	n/a	n/a	n/a	n/a	n/a	n/a
ML Total	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
FT	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

2010										
	Property frozen		Property seized (ongoing)		Property seized (in calendar year)		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML –	n/a	n/a	n/a	n/a	n/a	1	1	7,923,072 ⁶¹	1	7,923,072

⁶⁰ Figueira and P.Michel (See above)

⁶¹ P.Michel-£6,528,707 confiscated June 2010

Conviction - based										
ML-non-conviction-based	n/a	n/a	2	18,352,345 ⁶²	1	44,089,974 ⁶³	n/a	n/a	n/a	n/a
Underlying predicate offences where applicable	n/a	n/a	2	18,352,345	1	44,089,974	1	7,923,072	n/a	7,923,072
ML Total	n/a	n/a	n/a	n/a			n/a	Assisting another to retain benefit of criminal conduct	n/a	Assisting another to retain benefit of criminal conduct
FT	n/a	n/a	n/a	n/a			n/a	n/a	n/a	n/a

2011									
	Property frozen		Property seized (ongoing)		Property seized (in calendar year)	Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)		Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based	n/a	n/a	0	0	0	1	44,089,974 ⁶⁴	1	44,089,974
ML-non-conviction-based	n/a	n/a	2	44,100,169 ⁶⁵	0	0	0	0	0
Underlying predicate offences where applicable	n/a	n/a	n/a	n/a	n/a	n/a	Conversion and removal from jurisdiction of proceeds of crime	n/a	Conversion and removal from jurisdiction of proceeds of crime
ML Total	n/a	n/a	2	44,100,169	0	1	44,089,974	0	44,089,974
FT	n/a	n/a	0	0	0	0	0	0	0

2012										
	Property frozen		Property seized (ongoing)		Property seized (in calendar year)		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based	n/a	n/a	0	0	0		0	0	0	0
ML-non-conviction-based	n/a	n/a	1	10,195.63 ⁶⁶	1	178,676 ⁶⁷	0	0	0	0
Underlying predicate offences where applicable	n/a	n/a	n/a	n/a	n/a		n/a	n/a	n/a	n/a
ML Total	n/a	n/a	1	10,195.63	1	178,676	0	0	0	0
FT	n/a	n/a	0	0	0		0	0	0	0

2013

⁶² *Figueira and P.Michel (See above)*

⁶³ *Bhojwani (\$51,488,916 and £5,594,178 seized in March 2010)*

⁶⁴ *Bhojwani-\$51,488,916 and £5,594,179 confiscated June 2011*

⁶⁵ *Figueira and Bhojwani (See above)*

⁶⁶ *Figueira (£8,347.56 seized in January 2006). Figueira then absconded from Jersey until 2013*

⁶⁷ *Norris £147,060 seized March 2012*

	Property frozen		Property seized (ongoing)		Property seized (in calendar year)		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML Conviction-based	n/a	n/a	0	0	1	13,432.39 ⁶⁸	2	13,366.79 ⁶⁹	2	13,366.79 ⁷⁰
ML-non-conviction-based	n/a	n/a	2	188,871 ⁷¹	0		0	0	0	0
Underlying predicate offences where applicable	n/a	n/a	n/a		n/a		2	Assisting another to retain the benefit of drug trafficking	2	Assisting another to retain the benefit of drug trafficking
ML Total	n/a	n/a	2	188,871	0		0	0		
FT	n/a	n/a	0	0	0		0	0	0	0

1-3Q 2014									
	Property frozen		Property seized (ongoing)		Property seized (in calendar year)	Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases and Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
ML-non-conviction-based	n/a	n/a	1	178,676 ⁷²	n/a	n/a	n/a	n/a	n/a
Underlying predicate offences where applicable	n/a	n/a	1	178,676	n/a	n/a	n/a	n/a	n/a
ML Total	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
FT	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

326. Similar comprehensive statistics figures were not available in relation to confiscation outside the specific ML offence, though this matter was fully considered by the evaluation team.

Effectiveness and efficiency

327. The Jersey authorities have demonstrated in several cases effective use of confiscation regarding both proceeds of predicate offences and in respect of money laundering, with some significant confiscations in individual cases (both domestic and international). Nevertheless the total confiscated sums are still very low compared with the potential flow of criminal proceeds in Jersey, as a financial centre, when considering both incoming mutual legal assistance requests and past cases.

328. The Jersey authorities have amended the Proceeds of Crime Law to enable "saisie judiciaire" before indictment. Nevertheless the evaluators have observed that this has not changed domestic

⁶⁸ Smyth (£11,042 seized in April 2013)

⁶⁹ Figueira (Confiscation Order made by Royal Court for £8,040 (EUR 9,781.91) on 8th November 2013), Smyth (Confiscation Order made by Royal Court for £3,051 (EUR 3,584.88) on 5th July 2013)

⁷⁰ See 9 *ibid*.

⁷¹ Figueira (£8,347.56 seized in January 2006. Figueira then absconded from Jersey until 2013) plus Norris

⁷² Norris (see above)

practice of property being effectively frozen by financial institutions and DNFBPs through a "no consent" order by the FIU.

329. The evaluators identified some potential shortcomings in the confiscation powers, especially with regard to "value confiscation" of criminal assets given as gifts, or settled (both before and after the criminal conduct) in complex legal structures to which offenders are beneficially entitled. The evaluators were also concerned as to whether the current provisional measures regime is fully geared to deal with all potential money laundering in the local situation, given a recent decision in a case involving a discretionary trust (where the use of wider definitions of criminal property may have assisted the prosecution).

2.3.2 Recommendations and comments

330. The evaluators strongly urge the Jersey authorities to consider adopting the lifestyle assumptions set out in the UK proceeds of crime legislation in the context of financial crime in Jersey with a view to confiscating property acquired prior to the commission of the offence in question in appropriate circumstances.

331. The evaluators also advise to review and amend as appropriate the Proceeds of Crime Law in the light of the developing confiscation/provisional measures regime. Such a review should aim, where appropriate, to ensure gifts made to trusts before or after the commission of an offence may become susceptible to criminal confiscation in appropriate circumstances, and for provisional measures to be possible to preserve the position pending trial as outlined above in appropriate cases involving discretionary trusts.

332. In the context of enhancing the overall effectiveness of the present confiscation regime in Jersey, consideration might also usefully be given to the utility of introducing a non-conviction based confiscation regime to apply in parallel with the conviction-based system.

333. In summary, the evaluators recommend to :

- Amend the Proceeds of Crime Law to: a) include 'previous conduct' provisions akin to those found in the 2002 UK Act to enable freezing and b) enable confiscation of gifts made in general or specifically into a trust that were made before the relevant criminal offending.
- Amend the Proceeds of Crime Law to include a definition of who is "beneficially entitled".
- Amend the law to further the ability of temporary seizure of trust assets (e.g. in cases where an offender is one of the beneficiaries, when gifts or other suspicious orders are made).
- Consider the utility of introducing a non-conviction based confiscation regime to apply in parallel with the conviction-based confiscation system.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> • "value confiscation" of criminal assets given as gifts is limited; • Gaps identified with respect to the confiscation/provisional measures regime. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> • Overall effectiveness concerns given the relatively limited amounts of property seized and confiscated and considering the size and characteristics of Jersey's financial sector and its status as

		an international financial centre.
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2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

Special Recommendation III (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

334. The rating of the previous evaluation was Largely Compliant with 2 deficiencies noted. The first shortcoming was the lack of formal procedures to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373. In this context the Jersey authorities were encouraged to 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. On 12 December 2013, in response to an IMF Recommendation on SR.III, the Minister for External Relations approved a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze terrorist assets in order to comply with obligations under UNSCR 1373.

335. The second shortcoming was with regard to the definition of “funds” subject to freezing which was found not to cover assets ‘jointly’ or ‘indirectly’ owned or controlled by the relevant persons. Recommendations were given to change the legal framework implementing the UN Resolutions and amend them to expressly extend the definition of ‘funds’ subject to freezing to cover assets ‘jointly’ or ‘indirectly’ owned or controlled by the relevant persons, and to develop procedures to assess the effectiveness of their program to implement the UNSCRs and keep statistics regarding implementation. This has been addressed by the Terrorist Asset-Freezing (Amendment of Law) (Jersey) Regulations 2015 which came into force on 11th March 2015.

336. All financial institutions and DNFBPs met seemed by the evaluators to be familiar with Jersey sanctions published on the website of the JFSC (consolidation of financial sanctions targets listed by the UN, EU, and UK), and of their duty to freeze assets. It should be also noted that there were actual cases of asset freezing under the relevant UN lists. Unfortunately procedures of delisting and refreezing have not yet been issued, though these have been set out in the Sanctions handbook, which was available to the evaluators in draft and are due to be published.

Legal framework

337. The Terrorist Asset-Freezing (Jersey) Law 2011 (the “Terrorist Asset-Freezing Law”) – as amended - came into force on 1 April 2011. It supersedes the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (the “Terrorism Order”) and implements the relevant UN Resolutions.

338. The legal framework implementing the relevant UN Resolutions has also been amended by the enactment of a specific new law - the EU Implementation Law - which came into force on 31 October 2014 and provides the Minister for External Relations with the power to make Orders. Also on 31 October 2014, the Minister for External Relations made the EU Legislation (Sanctions - Afghanistan) (Jersey) Order 2014 and the EU Legislation (Sanctions – Al Qaida) (Jersey) Order 2014. These Orders supersede the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002.

339. These Orders give effect, respectively to:

- Council Regulation (EU) Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan; and

- Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

340. The Terrorism Law contains additional legal measures against terrorism related assets, including terrorism financing. The Terrorism Law provides for both criminal and administrative measures to restrain such assets in whatever form. The Terrorism Law contains provisions to seize and forfeit assets in connection with a criminal investigation or proceeding.⁷³ Article 15 of the Terrorist Asset Freezing Law requires the freezing of funds and economic resources “*owned, held or controlled by a designated person*”. The EU Orders in relation to Al Qaida and Taliban sanctions adopt EU Regulations which use the language “*belonging to, owned or held by*” (see Article 1 of Regulation 881/2002. The use of the words “held” and “owned” are sufficiently broad to catch jointly owned property. The use of the word “controlled” means that property that is held or owned indirectly is also caught.

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

Freezing Assets under UNSCR 1267

341. The UNSCR 1267/1989 (and also 1988) is implemented in Jersey through the EU Legislation (Sanctions - Al-Qa'ida) (Jersey) Order 2014 and EU Legislation (Sanctions – Afghanistan) (Jersey) Order 2014. The Orders designate listed persons by giving effect in Jersey to the corresponding EU Regulations: (EC) 881/2002 and (EU) 753/2011. These are the persons listed by the UNSCR 1267 Sanctions Committee. The JFSC and the Chief Minister's Department circulate this list to stakeholders through their respective websites. Besides prohibiting the supply or delivering of goods (“restricted goods”) or technical assistance related to military goods and technology to persons designated by the UNSCR 1267 Sanctions Committee, they make it an offence to make any funds available to or for the benefit of a designated person. The Orders further provide for the freezing of funds and economic resources belonging to, owned, held or controlled by a designated person (Article 2 of Regulation 753/2011 and Article 2 of Regulation 881/2002): “All funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I shall be frozen.”

342. In addition, in pursuance of Article 2 and Part 3 of the Terrorist Asset-Freezing Law, as amended on 11 March 2015, the funds and economic resources of those persons designated on the Al Qaida sanctions list (UNSCRs 1267/1989) and associated with the Taliban (UNSCR 1988) are immediately frozen and no funds, economic resources or financial services may be made available to or for the benefit of those persons.

343. Persons and entities subject to the freezing sanctions implemented in Jersey are kept in line with the consolidated U.K. list which, inter alia, incorporates not only the UN designations for UNSCR 1267 but also the EU designations for UNSCR 1373. The Chief Minister's Department has as yet not seen any reason to autonomously designate suspected terrorists under UNSCR 1373. This is because the Jersey authorities are not aware of any terrorists living in Jersey. Were such an additional designation to become necessary, it would be drafted in consultation with the U.K. Any domestic designation would presumably be based on information supplied by the JFCU or other law enforcement bodies. The Commission and Chief Minister's Department refer residents and businesses to: (i) the terrorism measures part of the U.K.'s consolidated list of financial sanctions targets, incorporating the UN and EU designations that also have legal effect in Jersey pursuant to the Terrorist Asset-Freezing Law; and (ii) recent listings by the UN which have

⁷³ The relevant laws in Jersey are the: Terrorist Asset-Freezing Law, the EU Implementation Law, EU Legislation (Sanctions) (General Provisions) (Jersey) Order 2014, EU Legislation (Sanctions - Afghanistan) (Jersey) Order 2014, and EU Legislation (Sanctions – Al Qaida) (Jersey) Order 2014. The Terrorism Order and Al-Qa'ida and Taliban Order made under the United Nations Act 1946 have been superseded but not yet revoked. Other legislation includes the Terrorism Law, Cash Seizure Law, Money Laundering Order, and Supervisory Bodies Law.

yet to be added to the UK's consolidated list (but which already have legal effect in Jersey pursuant to the Terrorist Asset-Freezing Law).

344. It is the view of the Jersey authorities that since the UK Supreme Court ruling in the case of *HM Treasury v Ahmed* [2010], the use of powers under the Terrorism Order, and the Al-Qa'ida Order, have been considered potentially vulnerable to challenge in Jersey's Court if they were used to freeze the funds of a designated individual. However, other provisions of the Orders may remain effective, for example prohibition of the supply of restricted goods, and consequently these Orders have not yet been revoked. Details of all Jersey legislation are published on the Jersey legal information website <http://www.jerseylaw.je> and further information and guidance regarding sanctions is published by the Commission.
345. The Commission's website also includes a link to HM Treasury's financial sanctions website where a consolidated list of UK financial sanctions and asset freeze targets is published. The list is a consolidation of financial sanctions targets listed by the UN, EU, and UK, and includes persons designated by the UN Al-Qaida and Taliban Sanctions Committee.

Freezing Assets under UNSCR1373(2001)

346. The UNSCR 1373 is implemented in Jersey through the Terrorist Asset-Freezing Law as amended. It provides a freezing regime, similar to the one giving effect to UNSCR 1267.
347. There are laws and procedures in place that give competent authorities the power to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373 (2001) and such freezing takes place without delay.
348. As described above since the UK Supreme Court ruling in the case of *HM Treasury v Ahmed* [2010], the use of powers under the Terrorism Order, and the Al-Qa'ida Order, have been considered potentially vulnerable to challenge in Jersey's Court if they were used to freeze the funds of a designated individual. However, other provisions of the Orders may remain effective, for example prohibition of the supply of restricted goods, and consequently these Orders have not yet been revoked.
349. Consequently, new asset-freezing provisions have been made by the Terrorist Asset-Freezing Law to enable the freezing of assets in connection with terrorism. Under this Law, a person is immediately subject to designation in Jersey if they are designated under the Terrorist Asset-Freezing etc. Act 2010 of 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 persons and entities with a view to combating terrorism, which implements UNSCR 1373 (2001).
350. A person may also be designated autonomously by the Minister for External Relations in accordance with the Terrorist Asset-Freezing Law. On 12 December 2013, in response to an IMF Recommendation on SRIII, the Minister for External Relations approved a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze terrorist assets in order to comply with obligations under UNSCR 1373.
351. The Jersey authorities have not yet received any external requests to autonomously designate a person under the Terrorist Asset-Freezing Law. The Minister for External Relations, in consultation with HM Attorney General, made a decision in one case that the assets of the person were not material to the offence and that an asset-freeze was not appropriate in the particular circumstances.⁷⁴
352. The Commission's website also includes a link to HM Treasury's financial sanctions website where a consolidated list of UK asset freeze targets is published that also have legal effect in

⁷⁴ [*AG v Mark Alexander Harding, 2015, JRC055*](#)

Jersey pursuant to the Terrorist Asset-Freezing Law. The list is a consolidation of financial sanctions targets listed by the UN, EU, and UK.

353. Article 21 of the Terrorist Asset-Freezing Law requires a relevant institution to inform the Minister for External Relations as soon as practicable if it knows or has cause to suspect that the person is a designated person or has committed an offence relating to freezing obligation.
354. The Terrorist Asset-Freezing Law provides that the funds and economic resources of a designated person shall immediately be frozen. The Terrorist Asset-Freezing Law defines funds as financial assets and benefits of every kind, including (but not limited to) any of the following –
- a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
 - c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
 - d) interest, dividends and other income on or value accruing from or generated by assets;
 - e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
 - f) letters of credit, bills of lading and bills of sale;
 - g) documents providing evidence of an interest in funds or financial resources; and
 - h) any other instrument, being an instrument of export financing.
355. The Minister for External Relations may make an interim or a final designation of a person who is not designated by the UK or the EU if the Minister for External Relations considers that it is necessary, for purposes connected with protecting members of the public from terrorism, that financial restrictions should be applied in relation to the person and –
- (a) the Minister for External Relations reasonably suspects that the person is or has been involved in terrorist activity;
 - (b) the Minister for External Relations reasonably suspects that the person is owned or controlled directly or indirectly by a person who the Minister for External Relations reasonably suspects is or has been involved in terrorist activity; or
 - (c) the Minister for External Relations reasonably suspects that the person is acting on behalf of or at the direction of a person who the Minister for External Relations reasonably suspects is or has been involved in terrorist activity.
356. When making any designation, the Minister for External Relations must give notice. The Terrorist Asset-Freezing Law also makes provisions for the variation or revocation of a designation.

Freezing actions taken by other countries (c.III.3)

357. The Terrorist Asset-Freezing Law provides that the funds and economic resources of a designated person shall immediately be frozen. Under this Law, a person is immediately subject to designation in Jersey if they are designated under the Terrorist Asset-Freezing etc. Act 2010 of 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 persons and entities with a view to combating terrorism, which implements UNSCR 1373 (2001). A person may also be designated autonomously by the Minister for External Relations in accordance with the Terrorist Asset-Freezing Law. The Minister for External Relations may make an interim or a final designation or

a person who is not designated by the UK or the EU if the Minister for External Relations considers that it is necessary, for purposes connected with protecting members of the public from terrorism, that financial restrictions should be applied in relation to the person and –

- a) the Minister for External Relations reasonably suspects that the person is or has been involved in terrorist activity;
- b) the Minister for External Relations reasonably suspects that the person is owned or controlled directly or indirectly by a person who the Minister reasonably suspects is or has been involved in terrorist activity; or
- c) the Minister for External Relations reasonably suspects that the person is acting on behalf of or at the direction of a person who the Minister for External Relations reasonably suspects is or has been involved in terrorist activity.

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

358. See III.1 – III.3 above.

Communication to the financial sector (c.III.5)

359. The system for communicating actions taken in relation to the freezing of assets by the Minister for External Relations is by written notice to the person designated. The Minister must also take steps to publicise the designation to the holder of any funds in the financial sector in order to freeze funds to which the Terrorist Asset-Freezing Law applies – see Article 10. Such a notice has immediate effect.

360. In order to inform all Jersey residents, as well as relevant persons, of changes in sanctions legislation, notices detailing revisions to the legislation are published in the Jersey Gazette section of the Jersey Evening Post, which has an extremely high local circulation, and on the Commission website.

361. It is believed by the Jersey authorities that the systems in place effectively communicate actions taken because of the high circulation of the Jersey Gazette and the specific targeting of the finance sector.

Guidance to financial institutions and other persons or entities (c. III.6)

362. Guidance on sanctions and freezing mechanisms is available on the Commission's website.

363. Some limited guidance on sanctions is also provided on the Chief Minister's Department website.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

364. Arrangements for dealing with requests for listing and de-listing designated persons, including requests for unfreezing funds and economic resources that have been frozen, are set out in a Memorandum of Understanding between the UK Foreign and Commonwealth Office (FCO) and the Minister for External Relations, signed on 11 March 2015 and [published](#) on the Government website. Further guidance to persons requesting un-freezing of funds is detailed in the sanctions handbook to be published imminently.

365. In respect of any designations made by the Minister for External Relations in Jersey under the Terrorist Asset-Freezing Law, rules for review and appeals are provided in Part 5 of the Terrorist Asset-Freezing Law and its Schedule.

366. No designation, or request for de-listing, has yet been made under this Law. However, where the Minister for External Relations makes an interim designation (Article 6), such designation

expires after 30 days unless a final designation has been made. The Minister may not then make a further interim designation in relation to the same grounds, but may make a final designation.

367. Where the Minister for External Relations makes a final designation, such designation expires after 12 months unless it is renewed or revoked.

368. In pursuance of Article 29 of the Terrorist Asset-Freezing Law, an application against an interim or final designation, in order to unfreeze funds, may be made by a person to the Royal Court. In accordance with paragraph 4 of the Schedule to the Law, the Court must not act in a manner inconsistent with the European Convention on Human Rights and Fundamental Freedoms, including an obligation to determine the matter in a timely manner.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

369. See III.7 – the same procedure applies.

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

370. Funds or other assets may be made available under a licence granted under Article 19 of the Terrorist Asset-Freezing Law. The Minister for External Relations may licence the release of funds for any purpose that is not otherwise contrary to the Law, in particular a licence granted by the Minister for External Relations must specify the acts authorised by it; may be general or granted to a category of persons or to a particular person; may be unconditional or subject to conditions; and may be unlimited or limited in duration.

371. Article 25(1)(g) of the Terrorist Asset-Freezing Law provides authority for the Minister to disclose any information to the United Nations for the purpose of giving assistance or cooperation with a Security Council Resolution and would apply in any case in which it would be desirable to inform the UN Committee or a Resolution requires notification of a licence.

Review of freezing decisions (c.III.10)

372. The Jersey authorities refer in this context to the same mechanisms described above in criteria III.7

373. As indicated above, where the Minister for External Relations makes an interim designation, such designation expires after 30 days unless a final designation has been made. The Minister may not then make a further interim designation in relation to the same grounds, but may make a final designation.

374. Where the Minister for External Relations makes a final designation, such designation expires after 12 months unless it is renewed or revoked. At each stage, either before making or renewing a final designation, the freezing decision would be reviewed.

375. Although the need for a review of a freezing decision has not as yet arisen, the Jersey authorities would implement a process that is consistent with the recommendations of the UK Reviewer of the Terrorist Asset-Freezing etc. Act 2010. That review has recommended the establishment of an Asset Freezing Review Group (AFRG) where the option of designation can be rigorously tested in a structured manner against possible alternatives on the basis of input from all concerned departments and agencies. The review recommends that –

- (a) Submissions put to the Minister should be thorough, considered and based on careful analysis of the legal position;
- (b) Decisions should be reached after consideration, as appropriate, of evidence from the police, prison service and other agencies;
- (c) The Minister should be properly and frankly advised on the application of a ‘reasonable belief’ test and the need to protect members of the public from terrorism;

- (d) The Minister should be prepared to change a determination where the test criteria are no longer met; and
- (e) Proportionality is considered, for example if designation is likely to have an impact of third parties or when it is likely to be followed by de-banking.

376. Article 32 of the Terrorist Asset-Freezing Law provides that, if a designation is made or a licence granted under the Terrorist Asset-Freezing Law, the Minister must appoint an independent reviewer to carry out a review of the operation of the Law, and the Minister must lay a copy of the report before the States Assembly.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

377. The mechanisms for freezing, seizing and confiscating terrorist-related funds or other assets in other contexts are Article 26 (forfeiture) of and paragraphs 3 to 7 of Schedule 3 (restraint orders) to the Terrorism Law and Articles 4 to 11 of the Cash Seizure Law.

378. Nevertheless the shortcomings identified in this report with regard to R.3 especially with regard to the scope of provisional measures might hamper effectiveness of action taken against funds with regard to SR III whenever this involves criminal proceedings regarding assets belonging to terrorist organisation designated under UNSCR 1373 or mutual legal assistance requests regarding such.

Protection of rights of third parties (c.III.12)

379. If a third parties' assets are mistakenly frozen under the Terrorist Asset-Freezing Law then the third party can use the procedure set out at III.7 to apply to have their funds unfrozen by the Royal Court.

380. Article 26(7) of and paragraph 5 of Schedule 3 to the Terrorism Law protect the rights of bona fide third parties, as does Article 11 of the Cash Seizure Law.

381. Furthermore, to the extent there are civil proceedings a third party can intervene in proceedings under the civil procedure rules (Royal Court Rule 6/10) and assert legal rights over property.

Enforcing obligations under SR.III (c.III.13)

382. The Supervisory Bodies Law provides the Commission and any other supervisory body that is designated under the Law with powers to: prepare and issue Codes of Practice (Article 22) setting out the principles and detailed requirements that must be complied with in order to meet certain requirements of the Supervisory Bodies Law and anti-money laundering and counter-terrorism legislation; and supervise compliance with the Money Laundering Order and Codes of Practice that are issued (Article 2). Article 11 of the Money Laundering Order requires a relevant person to have policies and procedures in place for determining whether a business relationship or transaction is with a person that is: (i) subject to measures under law applicable in Jersey for the prevention and detection of money laundering or terrorist financing, including persons designated under the Terrorist Asset-Freezing Law, EU Legislation (Sanctions - Afghanistan) (Jersey) Order 2014 and the EU Legislation (Sanctions – Al Qaida) (Jersey) Order 2014; (ii) connected with an organisation that is subject to such measures; or (iii) connected with a country or territory that is subject to such measures.

383. These powers will be in addition to those that already apply to persons carrying on regulated business. As a result of Codes of Practice that are issued under the regulatory laws, management must be able to properly guard against involvement in financial crime and ensure that the persons carrying on regulated business comply with all relevant legislation and guidance to counter ML and FT.

384. As part of its on-site examinations, the Commission considers whether relevant persons have in place the necessary processes and procedures to ensure that current sanctions are identified and reflected in CDD.
385. The Commission undertook a thematic examination of compliance with financial sanctions and customer screening arrangements in 2013-14. This program resulted in a published summary findings report which highlighted a number of areas for improvement but concluded that, *“Overall, banks in Jersey were well advanced in implementing their AML/CFT and financial sanctions systems and controls.”*
386. The Terrorist Asset-Freezing Law contains a number of criminal offences for failing to comply with its requirements.⁷⁵

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14)

387. The following Best Practice measures have been implemented

- 5(i)-(vii)
- 6(i), (ii) and (iv)
- 7(i), (ii), (iii), (vii) and (viii)
- All of 8
- 9(i) and (ii)

388. Further procedural guidance has also been given and is available on the Commission’s website.

Implementation of procedures to access frozen funds (c.III.15)

389. See III.9 above

Recommendation 32 (terrorist financing freezing data 2009 - 2015)

Table. Property frozen

Property frozen					
Year	Number	Natural	Legal	Amount in EUR and/or type of assets	Legal basis

⁷⁵ Extra-territorial application of provisions about offences

(1) An offence under this Law may be constituted by conduct (including acts and omissions) wholly or partly outside Jersey by –

(a) a UK national who is ordinarily resident in Jersey; or
(b) a person incorporated or constituted under the law of Jersey.

(2) In paragraph (1) “UK national” means –

(a) a British citizen, a British National (Overseas), a British Overseas citizen or a British overseas territories (where each of those terms has its meaning in the British Nationality Act 1981 (c. 61) of the United Kingdom);

(b) a person who under that Act is a British subject; or
(c) a British protected person within the meaning of that Act.

(3) Where an offence under this Law is committed outside Jersey –

(a) proceedings for the offence may be brought in Jersey; and
(b) the offence may for all incidental purposes be treated as having been committed in Jersey.

Responsibility of directors, partners and officers

(1) Where an offence under this Law committed by a partnership, association or body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) a person who is a partner of the partnership, or a director, manager, secretary or other similar officer of the association or body corporate; or

(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership, association or body corporate to the penalty provided for that offence.

(2) If the affairs of an association or of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the association or body corporate.

Civil and administrative sanctions are considered at 17.1 below.

	of Cases	persons	persons		(relevant UN resolution)
2009	1 ⁷⁶	0	1	US\$	Taliban SCR 1267 (1999)
2010	0	0	0		
2011	0	0	0		
2012	0	0	0		
2013	1 ⁷⁷	1 *	0	Fund capital calls – 21 transactions totalling £477,750 Distributions – 2 transactions totalling £29,930.17	Al-Qaida SCR 1333 (2000)
1-3Q 2014	0	0	0	0	0

Table. Number of notifications by Jersey financial institutions in connection with potential terrorist financing

	Assets frozen	Assets not frozen
Account in Jersey	None	2 ^{a, b}
Account in another jurisdiction	1 ^c	1 ^d

Notes to the Table:

^a Indirect connections with a designated entity in another country. No relevant assets in Jersey.

^b Assets not material to the offence and decision taken not to freeze assets

^c Assets value: USD 477,750 capital calls and USD 29,930 proportion of an investment distribution. The person was subsequently de-listed and assets released.

^d Company secretarial services only provided. No relevant assets in Jersey.

Effectiveness and efficiency

390. The evaluators note that all financial institutions and DNFBPs met seemed to be familiar with Jersey sanctions published on the website of the JFSC (consolidation of financial sanctions targets listed by the UN, EU, and UK that also have legal effect in Jersey), and of their obligation to freeze assets. It should be noted that there were cases of asset freezing under the relevant UN lists. The following information was provided by the Jersey authorities on freezing cases:

391. A report indicated suspected Taliban business connections of a Foundation, provided with Secretarial services in Jersey. The client relationship had been exited prior to the information being submitted.

392. Transactions through a non-Jersey booking centre between May 2006 - December 2012 involving the designated individual were notified by the fund administrator to the Chief Minister on 30 April 2013, although the person had been de-listed by the UN on 5 October 2012.

393. Asset freezes have immediate legal effect in Jersey once a person has been designated by the relevant UN Committee.

394. As indicated by the authorities, designations by the UN Sanctions Committee are published online by the UN on the day of designations. The UN media releases are monitored regularly and notices are re-published as soon as possible, ordinarily within 3 working days, on the Government

⁷⁶ A report indicated suspected Taliban business connections of a Foundation, provided with Secretarial services in Jersey. The client relationship had been exited prior to the information being submitted.

⁷⁷ Transactions through a non-Jersey booking centre between May 2006 - Dec 2012 involving the designated individual were notified by the fund administrator to the Chief Minister on 30 Apr 2013, although the person had been de-listed by the UN on 5 October 2012.

website and the Jersey Financial Services Commission website. Notwithstanding that, concerns remain on the immediateness of the freezing actions as the UN designations should be communicated immediately while currently it is communicated with a delay of three days which can impact effectiveness of the freezing regime.

2.4.2 Recommendations and comments

Special Recommendation III

395. The Jersey authorities should minimise delays in communicating UN designations.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	LC	<p><u>Effectiveness :</u></p> <ul style="list-style-type: none"> • Shortcomings identified with regard to R.3 might hamper effectiveness; • Concerns about the immediate communication of UN designations and thus the effectiveness of the freezing regime.

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

2.5.1 Description and analysis

Recommendation 26 (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

396. Jersey was assessed to be largely compliant with respect of Recommendation 26 in the IMF evaluation report. The factor underlying the rating indicated that resource constraints impacted on the effectiveness of the Intelligence Team of the JFCU.

397. The report concluded that effectiveness was an issue when measured in terms of concrete prosecutions results from the overall system. It was thus recommended to the JFCU to examine possible new ways to enhance its performance in terms of cases for investigation and asset recovery. In addition, the JFCU was recommended to issue periodic reports including statistics, typologies and trends and information on its activities and to maintain comprehensive statistics on the work of the Intelligence Team on matters relevant to the effectiveness and efficiency of systems for combating ML and FT. Adequate staffing was considered to be the prerequisite for improved effectiveness, thus it was also recommended that the Intelligence Team of the JFCU should be adequately staffed to perform its functions effectively.

Legal framework and other developments

398. Jersey's FIU is the Joint Financial Crimes Unit (JFCU), a combined unit of officers from Police and Customs, and the majority of whose staff and officers are under the operational control of the Chief Officer of Police. The Police operate under the Police Force (Jersey) Law 1974 and Customs under the Customs and Excise (Jersey) Law 1999. The JFCU operates largely in and around the relevant provisions of the Proceeds of Crime Law and those of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law relating to SARs and the obtaining of production orders. The JFCU has the full range of law enforcement powers available. Powers

are also available under the more generic Police Procedures and Criminal Evidence (Jersey) Law 2003. For more serious and/or complex cases of fraud, the Attorney General may consider invoking his powers under the Investigation of Fraud Law.

399. The legal framework was amended after the on-site visit, and within the timeframe period for consideration (i.e. 2 months), with the enactment of the following law and regulations:

- Amendment of the Proceeds of Crime Law by the Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 2015, which entered into force on 20 February 2015. This law introduces the power to make Regulations for the specific purpose of establishing a financial intelligence unit.
- Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 2015, which entered in force on 11 March 2015 and also amended the Money Laundering Order. These regulations designate the JFCU as the FIU and set out the criteria for gathering financial information, including for FIU requests for additional information, and applicable sanctions for persons failing to comply with the obligations set out under the Regulations. The previous relevant regulations referred to Police and Customs Officers instead of the FIU.

400. The authorities indicated that whilst the AG is responsible for international intelligence sharing under Proceeds of Crime Law, in practice the JFCU operate, and have operated for many years, under a standing delegated authority in the form of an AG Direction.

401. A Consolidated Direction from the Attorney General to the JFCU of the States of Jersey Police and Jersey Customs and Immigration Service was also issued on 16 January 2015, to clarify aspects related to information which can be disclosed by the JFCU to any overseas agency, for the purpose of conveying information relating to possible money laundering and the underlying predicate criminal offences or relating to terrorism. The AG Direction issued in 2015 updated a previous direction dated 23 October 2008, and consolidated intervening changes applied operationally prior to 2015 as a result of FIU recommendations to the AG.

402. The AG Direction clarifies the situations where consent is required and where JFCU is authorised to make a disclosure. The Direction clarifies the situations where the JFCU may make a disclosure to relevant overseas competent authorities, on the basis of a general consent to disclosure from the AG. Where JFCU is in any doubt, or where, even in circumstances where JFCU is authorised to make a disclosure it would prefer to obtain AG's specific agreement, then it may approach the AG on individual case basis. In cases of suspected terrorism, the requirements for an initial check set out in the direction are set aside and the JFCU may spontaneously disclose the information as deemed appropriate, solely to UK security agencies, national terrorist investigation unit and South-West counter terrorism intelligence unit.

Establishment of an FIU as national centre (c.26.1)

403. The FIU Regulations issued in 2015 (after the on-site visit) state that the Jersey FIU is considered to be the JFCU.

404. The JFCU is a unit within the Police structure, having investigative powers, one of its sub-units is the FIU. The JFCU is divided into three operational units: the Drugs Team (consisting of Customs Officers), the Operational Team (consisting of Police Officers) and the Intelligence Team (the FIU). The FIU receives, analyses and disseminates intelligence derived from suspicious activity reports. The other Teams are investigative bodies. The Head of the FIU is the Head of JFCU. The latter, as Head of Department (Detective Inspector), can engage in direct access with the Islands leading Law Officers, senior representatives of partner organisation and other agencies, and is a member of the Islands Financial Crime Strategy Group. In addition to operating with a number of groups at strategic level, the JFCU Head has direct access to key policy and decision-makers. In total, the staff establishment of the JFCU is 28 persons. Since the previous assessment, the JFCU headcount has been increased by a detective sergeant, 4 investigators, a

financial analyst, accountant and a dedicated lawyer. The FIU consists of two detective sergeants, four detective constables, and three civilian investigators. One analyst works on a part-time basis.

405. Despite the 2015 Regulations, for the purpose of this report, and considering the requirements of R.26, the assessment team considers that the Intelligence Team is undertaking the core functions of the FIU.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

406. Financial institutions and other reporting persons have been provided with guidance regarding the manner of reporting, the procedures that should be followed as well as with a SAR reporting form which should be used for reporting suspicions, as required under the Money Laundering Order (Article 21(2)). The template and the guide are published on the websites of the JFCU (Guide to compiling a SAR) and of the JFSC (AML/CFT Handbooks, in particular section 8 and Appendix A). The reporting form is a Schedule to the Money Laundering Order and it is also published as Appendix A to the AML/CFT Handbooks. The AML/CFT Handbooks guidance also includes reminders to reporting parties that they can contact the JFCU for advice and guidance in specific situations. Guidance is also provided both formally and informally, during meetings, presentations and telephone calls. Guidance on reporting on FT suspicion was considered to need improving.
407. During 2013, a new secure online facility for the submission of SARs was put in place in order to enable the industry to submit SARs electronically and to move away from the faxed and paper copy submissions. Faxed SARs receipt was discontinued as of June 2014. Over 90% of the SARs were being received electronically at the time of the on-site visit.

Access to information on timely basis by the FIU (c.26.3)

408. As a joint police/customs law enforcement unit, the FIU (within the JFCU) has access to an extensive range of intelligence databases, including access to information via Interpol and Europol, local criminal data and nationally via links to the UK FIU, the National Crime Agency, and the UK Police National Computer. Jersey is also a member of the Egmont Group and the Camden Asset Recovery Inter-Agency Network (CARIN) and can also obtain information from these networks. The FIU also has access to different information using free internet-search based engines, but also commercial databases as World Check, Credit Safe and KYC360. The FIU also has access to beneficial ownership information held by the JFSC. The assessment team has not been made aware of any particular issues relating to the timeliness of information needed, other than in the context of cases where international cooperation is being sought.
409. JFCU also has access to the following databases:
- Direct access
 - Financial Intelligence Unit Intelligence system – IFIS
 - Police command & control, incident recording, custody, crime and case management systems (includes case disposal/Court results)
 - UK Police National Computer (PNC)
 - Joint Asset Recovery Database (JARD)
 - Driver & Vehicle Database
 - MIDAS Marine registration
 - Immigration (local)
 - Indirect access (Jersey based indices) – via Law Enforcement:

- Social Security
- Population Office
- Housing Department
- Probation & Aftercare Service
- Education, Sport & Culture
- Courts Database
- Immigration (international)
- Indirect access – via Law Enforcement
 - Interpol Database - i24/7
 - Europol Information System - EIS
 - UK Department of work & pension
 - UK Driver & Vehicle Licencing Agency
 - UK Revenue & Customs
- Public/commercial
 - World-check
 - Credit-safe
 - GB Web portal (a database of consented data)
 - Companies Registration

Additional information from reporting parties (c.26.4)

410. In the case of a report submitted to the FIU under Articles 32 or 33 of the Proceeds of Crime Law or Article 22 of the Terrorism Law, and where a report was made before a particular act (or after the act has been done in the case of the Proceeds of Crime Law or person becomes concerned in a transaction or arrangement in the case of the Terrorism Law), the FIU can engage directly with reporting parties to obtain additional information to make an informed decision as to whether to grant “consent” for that act to take place (or transaction or arrangement to continue). “Act” is interpreted widely to include continuing a business relationship (see paragraph 75 of Section 8 of the Handbook for Regulated Financial Services Business). Failure by the reporting party to provide additional information will result in a delay or even refusal to grant “consent”.
411. At the time of the on-site visit and before the enactment of the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 2015 in March 2015, the legal framework did not enable the FIU to request additional information from reporting parties, other than from those that had submitted a SAR (Money Laundering Order, Article 21(4)). Article 21 of the Money Laundering Order, Part 5 on Reporting and Disclosure, provides that a designated police officer or designated customs officer must be provided with such additional information relating to a SAR disclosure as that officer may reasonably request and that such information is provided in such form and within such reasonable period as that officer may reasonably request. The authorities have nevertheless indicated that as a matter of practice, they had not experienced difficulties accessing such information, when requested, on an informal basis. Such cases often triggered a SAR submission, which then enabled them to be provided with the further additional information needed. In practice, institutions refused to submit a SAR without a legal document on 2 occasions in 2013 and respectively 4 occasions in 2014. Both the FIU and reporting parties expressed positive views about their level of co-operation in this context.

412. Since the 11th of March 2015, the FIU has a broader right to request additional information from “any relevant person”. Relevant person is defined as a person who is “mentioned in or otherwise identifiable” from a SAR or, to the reasonable knowledge or belief of the FIU, “holds information that is relevant to analysis of the report”.

Dissemination of information (c.26.5)

413. Article 34 of the Proceeds of Crime Law and Articles 24 and 25 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, provide for the FIU to disseminate financial information domestically and outside Jersey.
414. The FIU intelligence assessment and sharing process is the first stage of an investigation that seeks to establish if the suspicions prompting submission of a SAR corresponds to a predicate criminal offence, active criminal investigation or prospect of a criminal investigation in the relevant jurisdiction. The analysis triggers consideration of the initiation of a domestic ML investigation and where appropriate referral to domestic law enforcement.
415. The FIU’s aim is to share as much as possible relevant intelligence information. Every SAR is scrutinised upon receipt and subject to an established grading process, against fixed criteria. FIU analysis is a methodical and structured process involving assessment of every SAR, the primary focus to identify suitability for referral to Law Enforcement where a decision on ML investigation can be made. The FIU process is designed to ensure all SARs are analysed and referred to law enforcement where appropriate for consideration as to whether a ML investigation should be launched.
416. The analysis process is undertaken with due consideration of defined stages and criteria, distinguishing whether the subject is local or overseas, and whether there is a current on-going criminal investigation. If there is one, the FIU would handle all intelligence inquiries whilst law enforcement apply for production orders and letters of request in order to obtain the intelligence on an evidential basis.
417. When substantiated, a report is prepared by an investigator and submitted for review by a supervisor and subsequently it is referred for consideration by the JFCU Decision Making Panel. The panel comprises the JFCU legal advisor, the detective inspector JFCU and the detective sergeant JFCU Operations. It is the decision-making authority for launching a ML investigation or filing the report. This approach applies both to domestic and overseas information sharing.
418. Terrorism SARs are graded as a high priority. Analysis includes Police and IFIS databases, as well as open source research. Dissemination considerations include Special Branch, South West Counter Terrorism Unit, National Terrorism Financial Investigation Unit, Egmont members or any Law Enforcement Agency around the world with TF responsibilities. No TF SARs have led to opening an investigation locally.
419. In addition to dissemination for initiating criminal investigation, information is very much shared on intelligence basis. Most intelligence sharing is done with other FIUs. Domestically intelligence sharing is done in approximately 250-350 cases per year during last four years.
420. The fact that the Attorney General can be involved in the decision making process for approving information sharing with foreign counterparts raises questions as to whether or not this limits to some extent effective and prompt information sharing. The authorities have indicated that the Attorney General is not involved in every decision to share intelligence, leaving that decision at the discretion of the FIU .

Operational independence and autonomy (c.26.6)

421. The JFCU is comprised of Police and Customs Officers (with civilian support staff), led by a Police Detective Inspector who is directly answerable to senior officers and the Chief Officer of Police. As such, it is a law enforcement controlled entity. In cases of serious or complex fraud, the

Attorney General may take the lead by invoking his powers under the Investigation of Fraud Law and, where he does so, JFCU officers will assist Crown Advocates who will have the lead on the investigation.

422. The Chief Officer of Police has the option to re-deploy officers from the JFCU as operational circumstances require. As a small police service, JFCU officers are assigned other operational police duties on a rotational basis, in addition to policing of some public events. Many officers possess secondary policing skills such as firearms, search and family liaison, which results in further abstraction from the core role. JFCU analysts support investigative activity across other police departments. The Head of the unit is a Police Detective Inspector directly answerable to senior officers of the Police, in the same way as other Police Departmental Heads. Although there is a very close working relationship with the Attorney General and the Law Officers' Department, from who guidance and direction may be requested, the Attorney General does not have operational control over the deployment of JFCU officers and staff.
423. Using Police officers of JFCU and especially from the Intelligence Team for other Police duties can impact the limited resources of the FIU and raises questions about the independence and autonomy of the FIU. Jersey's FIU is stated to be JFCU in all relevant regulations and also in external communication. However, all FIU core functions (receiving, analysing and disseminating) are carried out by the Intelligence Team of the JFCU. Other Teams are investigative bodies. This situation generates to some extent confusion about the legal status, role and autonomy of the FIU.

Protection of information held by the FIU (c.26.7)

424. The JFCU offices are situated within a part of the Police estate that is restricted to security pass holders only (electronic swipe card access). Entry to the JFCU office requires an appropriate swipe card access above and beyond that required to access the main building. Material that comes into the possession of the JFCU is secured electronically on a bespoke computer intelligence system requiring restricted login privileges. All hard copy material is stored in secure areas which are alarmed outside of office hours.
425. Police officers employed within the unit are also covered by Police Disciplinary Regulations covering the improper disclosure of information. Civil servants are subject to the Civil Service Disciplinary Procedures and they operate under a code of conduct issued by the States of Jersey. Police officers and civil servants sign a declaration under the Official Secrets (Jersey) Law 1952.
426. Information that is disclosed under the Proceeds of Crime Law and the Terrorism Law is subject to restriction - which governs the dissemination of that information within and outside the Jersey. Any information disclosed to a Police Officer shall not be disclosed by him, or any other person who obtains the information, unless its disclosure is permitted under Articles 34 of the Proceeds of Crime Law or Articles 24 and 25 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law.
427. Under Article 34 of the Proceeds of Crime Law, and Article 24 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, information can be disclosed within the Island to the Attorney General, the Commission or a Police Officer. *Police Officer* is defined in the law as "a member of the Honorary Police, a member of the Police Force, the Agent of the Impôts or any other officer of the Impôts" (Customs Officer). A letter from the Attorney General pursuant to (the previous) Article 30(2)(d) of the Proceeds of Crime Law provides consent for the JFCU and the Commission to disclose, for intelligence purposes, any information that has been disclosed to the JFCU or the Commission, pursuant to the Proceeds of Crime Law, to certain individuals in the Chief Minister's Department in certain circumstances and subject to certain conditions, notwithstanding renumbering or amendment to that previous legislation.

428. Under Article 34 of the Proceeds of Crime Law and Article 25 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, information can be disclosed outside the Island with the Attorney General's consent generally (by reference to directions drawn up by the Attorney General and amended from time to time), or specifically on a case-by-case basis, for the purpose of the investigation of crime outside the Island or of criminal proceedings outside the Island or to assist a competent authority outside the Island. The Attorney General may impose restrictions on the use of the information (intelligence only) and may restrict the further disclosure of the information to any other person or body. The Proceeds of Crime and Terrorism Law repealed the Drug Trafficking Offences Law however; the Proceeds of Crime Law applies in respect of drug trafficking offences.

Publication of periodic reports (c.26.8)

429. The Chief Officer of the Police is required to publish a publicly available annual policing report for the Police. A very brief overview of Financial Crime and the overall activity of the JFCU is contained within this report. The JFCU itself releases information via a JFCU section of the Police website, which includes brief data and analysis of various aspects, including updates of statistical data on the grounds for SAR disclosures, breakdowns per reporting entities, and trends. The JFCU's 2014 annual statistics report has been published in February 2015. Sanitised cases and typologies are also published via the JFCU section of the Police website.

430. Two typologies reports have been issued in Jersey: one in 2008 and an updated one in 2015. Both reports have been prepared with assistance from a consultancy firm commissioned under the Island's AML/CFT strategy, which had identified the need to raise awareness of typologies that are relevant to Jersey. Both reports are available on the website of the JFSC while the JFCU's website only includes the 2008 typologies report and Egmont Group examples of sanitised cases. Typologies and trends are also presented to the industry through lectures and presentations given by the JFCU.

431. Considering the fact that 7 years have elapsed between the two typologies reports, and also the information included therein, the assessors consider that additional efforts are required in order to ensure that periodic reports are issued, identifying money laundering and terrorist financing trends and patterns.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

432. Jersey has been an Egmont member since 1998 and in May 2014 it signed the updated Commitment to membership. The FIU has had access to the Egmont Secure Web since 1998.

433. The FIU indicated that the AG is not consulted, and does not intervene in operational matters regarding the sharing of intelligence with Egmont members.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

434. In total, the staff establishment of the JFCU is twenty-eight persons. The JFCU is headed by a Police Detective Inspector, and divided into three teams:

- Intelligence (dealing with analysis, research, and dissemination, of SAR related information and the servicing of the majority of Requests for Assistance from overseas FIUs). The FIU staff establishment includes two Detective Sergeants, four Detective Constables, and three Civilian Investigators.

- Operations (dealing with the longer term investigations of fraud and ML/FT, together with assisting the Attorney General on more serious/complex cases). Staff establishment includes one Detective Sergeant, five Detective Constables, and two Civilian Investigators.
- Drug Trafficking Confiscation (Customs officers) – which also provides a valuable link between the Police and Customs on a wider range of law enforcement matters. Staff establishment includes one Senior Customs officer and two Customs officers.

435. The teams are supported by two Financial Analysts, one Accounting Support and two Administrative staff who deal with correspondence, data input and document management. The JFCU has one Detective Constable seconded full-time to the Law Officers Department to ensure efficient coordination of Mutual Legal Assistance requests and general operation between the JFCU and LOD. The JFCU has a Legal Adviser embedded within the team, whose role is to advise, support and give guidance in the legal aspects of investigations and criminal prosecutions in respect of financial crime, ML/FT and financial regulatory offences.

436. The funding for human resources is covered within the overall fixed budgets of the Police and Customs. As with all other departments, sub-budgets are provided for out of the overall fixed budget for administrative supplies, overtime etc. This all originates, however, from the fixed allocated budget of the Home Affairs Department, funded from Government revenue. The 2014 budget for the JFCU was £1,513,900 (6.28% of the Police Budget), committed almost exclusively to direct staff costs. In 2013 the numbers were respectively £1,442,600 (5.99%) and in the 2012 £1,335,000 (5.5%).

Integrity of FIU authorities (c.30.2)

437. All of the posts (officer and civilian) are filled by Police officers, civilian employees of the Police, or Customs officers. High standards of vetting for the employees as well as immediate family members are undertaken before deployment anywhere within the Police or Customs is permitted.

438. A generic recruitment policy exists for posts with the Police, which is available on the Police intranet. When JFCU police officer vacancies arise, they are advertised within the Police and formal applications are required with endorsements (or otherwise) from supervisors.

439. Civilian applicants are vetted and references checked by the Police Human Resources Department. Police officer applicants will already have been vetted upon entry to the Police and qualifications checked. All officers and staff are vetted by the Security Services and are required to sign a declaration under the Official Secrets (Jersey) Law 1952 upon joining the organisation.

440. The integrity of police and customs officers in the JFCU will have already been tested during time served beforehand in either Service, and probing questioning with regard to integrity issues are posed during the interview process. There are disciplinary policies and procedures in place to deal with breaches in these respects and these are set (for police officers) through the Police Force (Jersey) Law 1974 and Police Discipline Code. The Police has its own internal Professional Standards Department which has the remit and capacity to investigate any internally-generated concerns, as well as complaints from outside the Police, and is proactive. There are also policies and procedures for the investigation and resolution of complaints and grievances.

441. The interviewing and selection of Police staff or officers for the unit is undertaken by a group, including the Detective Inspector, and high priority is given to the examination of applicants' personal attributes and skills, such as: proven investigative experience; confidence in ability to assimilate and evaluate intelligence; completion of national investigative training; excellent communication skills; and a strong awareness and understanding of key AML/CFT legislation and matters in general. Owing to the specialised nature of work, it is accepted that the development of other key skills and knowledge for the role will follow upon entry. The maintenance of standards

and development of knowledge is ensured by a process of annual performance reviews and the setting and subsequent review of personal objectives.

Training of FIU staff (c.30.3)

442. The majority of police officers and civilian investigators in the department are trained detectives, having attended a nationally accredited Detective Training Programme. The Department Head is a trained Senior Investigation Officer (Crime). All investigators, the financial analysts and accounting support staff are required to undertake study and attain the International Compliance Association Diploma in Anti-Money Laundering. At the time of the onsite, four staff were undertaking the diploma, and one was expected to commence in 2015. All remaining staff have attained the qualification, in some cases supplemented by International Compliance Association Diplomas in Compliance and Financial Crime. Several investigators have attended National Fraud and Financial Investigation Courses and in 2013 ten investigators, analysts and accounting support staff undertook the UK Police National Improvement Agency course in Financial Intelligence and Financial Investigation. Seven staff have completed a one-week programme in FT from the UK National Terrorism Financial Investigation Unit, and a further two staff were to be trained in 2014. Both analysts and one investigator have completed the Egmont Tactical & Strategic Analyst Training Course. In addition, focused ML/TF trainings have been received by assorted staff across the JFCU on a wide variety of topics. One police officer has completed the MONEYVAL Assessor Training programme.

Recommendation 32 (FIU)

443. The FIU maintains comprehensive statistics regarding the receipt, analysis and dissemination of SARs. Details of all assets under management are recorded, and the JFCU is able to estimate the value of each SAR submitted and analyse this accordingly.

444. An overview of relevant statistics is provided below:

Received SARs:

	2010	2011	2012	2013	2014
	1746	1848	1751	2030	2287

Received SARs (TF)

	2010	2011	2012	2013	2014
	4	10	14	11	20

Year	Total FIU Disseminations	Standard FIU Disseminations	Enhanced FIU Disseminations	Disseminations to JFCU Operations (Investigation Team)	Initiated new criminal investigations ⁷⁸	Initiated criminal cases with ML ⁷⁹	Added to existing criminal investigations ⁸⁰	Total number of police investigations ongoing in that year	Police Investigations Opened within that year	Police Investigations Closed within that year
2010	212							18	1	9
2011	2037				14	5	24	15	6	2
2012	1840			57	41	22	42	24	11	6
2013	1726	1465	261	46	9	0	13	26	8	8
2014	2431	1917	514	52	7	6	12	32	14	10

⁷⁸ SARs received and disseminated by the FIU to Ops before investigation initiated – for Ops started in that year (disseminations not necessarily done in the year)

⁷⁹ SARs received and disseminated by the FIU to Ops before investigation initiated – for Ops started in that year (disseminations not necessarily done in the year)

⁸⁰ SARs received and disseminated by the FIU to Ops after investigation initiated – for Ops started in that year (disseminations not necessarily done in the year)

Notes:

1. Each dissemination can include multiple SARs and there can be multiple disseminations for the same investigation.

	FIU Cases in the reference year		Related judicial proceedings in reference year – Number of cases						Related judicial proceedings in reference year – number of persons					
			Prosecution (based on FIU disseminated cases)			Convictions (final)			Prosecution (based on FIU disseminated cases)			Convictions (final)		
	Under Investigation at year end	Completed in reference year	ML	FT	Other criminal offences	ML	FT	Other criminal offences	ML	FT	Other criminal offences	ML	FT	Other criminal offences
2010	9	9	2 ⁸¹			2			2			2		
2011	13	2	-		2 ⁸²			2			2			2
2012	18	6	-		2 ⁸³			2			5			5
2013	18	8	2 ⁸⁴			2			4			4		
2014	16	10												

445. Article 32 of the Proceeds of Crime Law allows reporting entities a defence against a money laundering offence by seeking the consent of the FIU to a financial activity subject to a suspicious activity report, and Article 18 of the Terrorism law provides a similar defence in respect of terrorist financing. All consent requests are treated as a priority in order to provide the quickest response to a reporting entity. If consent is not granted, the reporting entity may commit an offence where it completes the financial service for the customer. The FIU can review its decisions in relation to granting or refusing consent.

	2008	2009	2010	2011	2012	2013	2014
Information from the JFCU on consent to exit	94	70	152	606	847	1519	1993
Exit review actions	Not available	NA	NA	NA	NA	32	62

Additional element

446. Statistics are kept on local investigations, prosecutions, convictions relating to ML, FT or underlying predicate offences where SARs have featured, but may not have initiated the process.

447. Jersey does not maintain comprehensive statistics on SAR information disseminated overseas which results in an investigation, prosecution, and convictions for ML, FT or an underlying predicate offence, as it does not have direct access to the results of such disseminations.

Effectiveness and efficiency

448. The evaluation team has considered that the current institutional and legal frameworks which identify the JFCU as the FIU do not appear to fully satisfy the requirements of FATF Recommendation 26 and need reviewing.

⁸¹ Bhojwani, P.Michel

⁸² Inclusive of all investigations initiated in given year or ongoing. AG v Smith (Fraudulent Conversion) AG v J.Michel (Attempting to Pervert the Course of Justice)

⁸³ AG v Cameron, Lewis, Foot and Christmas (Fraudulent Inducement to Invest); AG v Huchet (Fraudulent Conversion)

⁸⁴ AG v McFeat, Smyth and Howard, AG v Ellis

449. In particular, in line with enabling provisions, legislation should be enacted which sets out in more detail the FIU's core functions (receiving, analysing and disseminating suspicious activity reports and other information relevant concerning ML, TF and associated predicate offences) but also its discrete responsibilities within the Police structure, thereby increasing its status, its operational independence and autonomy, and powers.
450. The analytical output of the FIU has improved and ML cases are ready to be taken on by the police. There have been a few cases where the intelligence file produced by the FIU has enabled the police to move the case from the intelligence phase into the investigation phase, through to indictment and ultimately conviction. It is also to the FIU's credit that it has shared intelligence from domestic SARs widely in many cases, with a view to assisting prosecutions abroad and supporting foreign asset recovery through measures taken in Jersey courts.
451. The FIU has put in place a quality control as a result of which it rejects poor quality SARs or asks for additional information before accepting them. Tax related suspicion continues to be the highest reason for disclosure. Jersey's authorities have demonstrated, with case examples, the added value of FIU's analytical product. Most of the cases presented to the evaluation team are related to overseas activities supporting criminal investigations in other countries. Cases are related to predicate crimes and also ML, including both self-laundering and third party ML. The feedback received from foreign FIUs and LEAs was positive. The evaluation team however remained of the view that domestically, FIU outputs seemed to be underutilised. The assessment team considered that focus should be devoted to exploiting SARs and additional related information in order to identify and address ML in Jersey, which could then have been prosecuted as well as to the predicate offence. This weakness the Police have recognised and are seeking to address it.
452. Concerns were also been raised during the visit regarding the limitation to the FIU's powers to gather additional information from subjected entities, as it did not have a legal power to obtain additional information from entities other than those that have submitted a SAR until March 2015.
453. The statistical information received indicated that the FIU was able to gather additional information through their intelligence channels in the large majority of cases, with only few refusals (2013: 2; 2014: 4). However, such a practice, which remained dependent on the goodwill of the reporting entities, could not be considered by the assessment team as being fully satisfactory. Furthermore, such information requests could not be considered as being adequately secured by enforceable confidentiality rules.
454. The assessment team considered that this could have impacted negatively not only on the fulfilment of the core functions of the FIU but also on its capacity to provide the widest range of international co-operation to foreign counterparts (though there is no evidence to suggest that this has been a problem in practice). This would affect the FIU's capability to conduct larger and more complex analyses, focusing primarily on ML and associated predicate offences, and consequently on the dissemination of meaningful information for the purpose of investigation by the police.
455. Shortly before the visit, draft regulations had been lodged by the Chief Minister and these have been adopted after the on-site visit, widening the powers of the FIU to request additional information from other relevant persons and covering aspects related to situations of non-compliance with the disclosure request. Given their recent adoption, the effectiveness of implementation of the new powers could only be verified in future evaluations.
456. The FIU receives electronically SARs since 2013 through the new secure online facility, and this channel was being used for almost 90% of SARs as of January 2015. All SARs received are subject to an initial assessment and grading (urgent or regular). Urgent SARs will be appointed directly for analysis, while regular SARs are analysed on first-in-first-out principle. Regular SARs would be analysed within a timeframe of 3 months. Analysed materials suitable for local criminal investigation are mainly disseminated to the Operational Team or Drugs Team for investigation.

457. The authorities have provided information on the numbers of reports received, which could be considered “pro-active” (SARs submissions covering a range of suspicious activity) as opposed to “defensive” (interpreted as submissions of SARs received following a Police Enquiry, Liaison Notice, Production Order, Court Order, or Investigation of Fraud Order). For 2014, there were 2843 proactive, against 257 defensive triggers.
458. The evaluation team was pleased to note the operational changes implemented by the FIU since the last IMF evaluation, notably the electronic reporting and the internal formalisation of the case management process of SARs analysis and dissemination.
459. While the number of disseminations by the FIU for initiating criminal investigations is rather high, there are pending questions as to the reasons why those disseminations have led to so few successful investigations and prosecutions. The assessors remained of the view that the information gathered through SARs and the FIU’s analysis remained insufficiently exploited in Jersey. The appointment to the Law Officers’ Department of a lawyer specialising in AML/financial crime (who is based with the Police) is very welcome. This should bring better focus and identification of those domestic cases where the money laundering aspects need to be pursued more vigorously by suitably trained law enforcement officers with a view to more serious domestic money laundering prosecutions beyond the drugs predicate.
460. During the onsite visit, the assessors expressed concern about the process in place which enables the involvement of the AG in the information sharing process, as this triggered questions regarding the FIU’s autonomy regarding its decisions in respect of intelligence sharing. The FIU has indicated in the period from 2010-2014, there have been 13 cases where the JFCU was authorised to make a disclosure and has nevertheless requested specific agreement from the AG.
461. Though the FIU’s resources have been reinforced since the previous evaluation, so has its workload. Police Officers carrying out FIU core functions appear to be involved, on a rotational basis, in other police related duties. The evaluation team’s understanding from the exchanges held is that, from time to time, this has led to situations where the FIU’s implementation of its core functions has been affected by priority operational needs of the Police more generally, as well as by the assistance provided in other serious/complex criminal investigations which resulted in the diversion of FIU staff resources for other police tasks, which may not necessarily be related to ML/TF.

2.5.2 Recommendations and comments

Recommendation 26

462. Before the on-site visit, though this was not explicitly mentioned in the regulations, the JFCU was considered to be the FIU. This has changed since the 11th of March 2015, with the enactment of the FIU Regulations. The JFCU is explicitly considered to be the FIU of Jersey in the Proceeds of Crime Law, Terrorism Law and Money Laundering Order.
463. However it is a fact that the core duties of the FIU are carried out by one of the sub-departments of the JFCU. This situation triggers concerns regarding the autonomy of the FIU within the Police, and its impact on the FIU function given its current positioning within the Police’s overall structure. The Head of FIU is also leading the police investigation of financial crimes and drug related crimes. While the FIU regulations are a step in the right direction, they have not yet and should address in more detail the FIU’s core functions and also its discrete responsibilities within the Police structure, thereby increasing its status, its operational independence and autonomy, and powers.
464. Jersey authorities should make additional efforts in order to ensure that reports identifying money laundering and terrorist financing trends and patterns are issued on a more frequent basis.

465. The overall number of domestic disseminations appears to be rather low. While considering the number of disseminations by the FIU for initiating criminal investigations, the authorities should consider conducting a review to determine the reasons why those disseminations have led to so few prosecutions.

Recommendation 30

466. A regular review of allocated resources to the FIU should be undertaken in order to assess their overall adequacy. It is also suggested to reconsider the rotational practice, as the work of small units such as the FIU can be remarkably impacted by such employments.

467. Current situation with respect to the FIU's current positioning within the Police and the fact that the regulations define the JFCU as the FIU, although in practice it is one sub-department of the JFCU, raises some concerns and needs to be analysed by the authorities.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	LC	<ul style="list-style-type: none"> Concerns regarding the autonomy of the FIU within the Police, given its recognition in law, its current positioning within the Police's overall structure and its rotational practice, and the AG's role with respect to disclosures to foreign FIUs; Only two reports on typologies and trends have been issued in a timeframe of 7 years. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The FIU's power to obtain new information from reporting entities, rather than additional information from those that had submitted a SAR, was introduced after the visit and the effectiveness of its implementation could not be demonstrated.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legislative framework and other enforceable means

468. The primary legislative foundation for customer due diligence (CDD) and other AML/CFT preventive measures in Jersey is the Proceeds of Crime Law, which allows the Chief Minister to prescribe measures to be taken (including measures not to be taken) by persons carrying on financial services business (through the Money Laundering Order). The Proceeds of Crime Law also defines money laundering and tipping-off offences and the offence of not reporting suspicious activity, deals with confidentiality and provides exceptions to enable disclosure of reported activity in certain restricted circumstances, and sets forth (as a Schedule) the list of financial services business activities subject to the preventive measures. Similar provisions can be found in the Terrorism Law.
469. For purposes of this assessment, the Proceeds of Crime Law and Terrorism Law, having been adopted by the States of Jersey Assembly and sanctioned by the Privy Council, constitute primary legislation. The Money Laundering Order, having been made by the Minister and authorised by the States of Jersey Assembly constitutes secondary legislation.
470. In addition, the Commission prepares and issues Codes of Practice under Article 22 of the Supervisory Bodies Law (AML/CFT Codes) setting out principles and detailed requirements for compliance with statutory requirements. In particular, these AML/CFT Codes comprise a number of requirements: (i) to be followed in the area of corporate governance which it is considered must be in place in order to comply with statutory requirements; and (ii) explain in more detail how a statutory requirement is to be complied with. Accordingly, the AML/CFT Codes (like statutory requirements) are described using the term “must”, indicating that these requirements are mandatory (section 1.2 of the AML/CFT Handbooks).
471. In practice, these AML/CFT Codes are issued through the four AML/CFT Handbooks published by the Commission and are in addition to Codes of Practice that are prepared and issued by the Commission under the regulatory laws.
472. Part 2 of the Supervisory Bodies Law provides for the Commission to monitor and ensure compliance with AML/CFT requirements, including statutory requirements and AML/CFT Codes. Article 8 of the Supervisory Bodies Law gives the supervisor broad powers to examine supervised persons, and to require the supervised person to supply information and answer questions.
473. The Supervisory Bodies Law also provides a range of sanctions for non-compliance with AML/CFT requirements (including AML/CFT Codes). Article 26 authorises a supervisor to issue a public statement concerning a person that appears to have committed a contravention of any Code of Practice. Article 23 provides that, if a supervised person has failed to comply with any Order or any Code of Practice, the supervisor may “give ... such directions as it may consider appropriate, ...” including imposing a prohibition, restriction or limitation, requiring the removal of a person, and requiring the ceasing of operations and winding up of a business. Article 18 authorises a supervisor to revoke the registration of a person that is regulated under the Supervisory Bodies Law for non-compliance with any AML/CFT Code (in addition to identical provisions in each of the regulatory laws).
474. The Codes of Practice are accepted as “other enforceable means” (OEM) for the purposes of this assessment, on the basis that: (i) they are issued by a competent authority; (ii) failure to follow any Code of Practice may, amongst other things, attract regulatory sanction (under Article 22 of the Supervisory Bodies Law); and (iii) the range of possible sanctions is largely effective, proportionate, and dissuasive.

475. In addition to publishing the AML/CFT Codes, the four AML/CFT Handbooks also: (i) summarise the statutory provisions that apply, in particular those set out in the Money Laundering Order; and (ii) present ways of complying with statutory requirements and the AML/CFT Codes. Guidance notes must always be read in conjunction with statutory requirements.
476. For the avoidance of doubt, the AML/CFT Handbooks do not themselves set requirements. Rather, they summarise statutory requirements, provide a forum in which to publish AML/CFT Codes issued by the Commission, and present ways of complying with statutory requirements (in particular those set in the Money Laundering Order) and the AML/CFT Codes.
477. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of «financial institutions» in the FATF 40+9 Recommendations. All categories of financial institutions are authorised and supervised, including for AML/CFT purposes, by the Commission.

Financial Institutions				
Financial activity	Supervisor	No. of businesses	Schedule 2 of the Proceeds of Crime Law	Description
Acceptance of deposits and other repayable funds from the public	Commission	34	Part A – 1 Part B – 7(1)(a)	Deposit-taking business as defined in Article 1 of the Banking Business Law Acceptance of deposits and other repayable funds from the public
Lending	Commission	53	Part B – 7(1)(b)	Lending, including consumer credit, mortgage credit, factoring (with or without recourse), financing of commercial transactions (including forfeiting)
Financial leasing	Commission	0	Part B – 7(1)(c)	Financial leasing
The transfer of money or value	Commission	53	Part A - 4 Part B – 7(1)(d)	Transmitting or receiving funds by wire or other electronic means - included in the definition of financial service business (Article 2(9) of the Financial Services Law - money service business). No reference to value. Money transmission services
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Commission	16	Part B – 7(1)(e)	Issuing and administering means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money)
Financial guarantees and commitments	Commission	18	Part B – 7(1)(f)	Guarantees and commitments

[illegible]

Financial Institutions				
Financial activity	Supervisor	No. of businesses	Schedule 2 of the Proceeds of Crime Law	Description
liquid securities on behalf of other persons			Part B 7(1)(m)	Safe Custody Services
Otherwise investing, administering or managing funds or money on behalf of other persons	Commission	508	Part B – 7(1)(n)	Otherwise investing, administering or managing funds or money on behalf of third parties
Underwriting and placement of life insurance and other investment related insurance	Commission	69	Part A - 2	Long-term business as defined in Article 1(1) of the Insurance Business Law
Money and currency changing	Commission	53	Part A - 4	A bureau de change - included in the definition of financial service business (Article 2(9) of the Financial Services Law - money service business)

Note:

1. The table does not represent the number of registered businesses as some businesses undertake more than one type of business and have therefore been shown against each of the activities they undertake.
2. Jersey Finance⁸⁵ publishes quarterly statistics which are available from their website.

478. The list of financial institutions in Schedule 2 of the Proceeds of Crime Law is subject to several exceptions. The authorities stated that certain activities are excluded due to the wide definitions that are used in the regulatory laws to define collective investment funds and fund functionaries, deposit-taking business, insurance business, financial service business, and when business is being carried on in, from within, Jersey

479. The rationale for such exemptions is broken down in the following four categories:

- i. The activity is inherently low-risk/not subject to FATF coverage, e.g:
 - union or employer's associations providing insurance for provident or strike benefits
 - some investment business as newspapers, broadcasting and information services making "buy" and "sell" suggestions
- ii. There is no person in Jersey to attach AML/CFT obligations to because the activity is conducted in a country outside Jersey, e.g:
 - central EU banks that have depositors in Jersey
 - certain insurance business carried on by Lloyds of London and which is with Jersey resident customers
 - certain overseas distributors of funds which have Jersey resident customers
- iii. To avoid a duplication of AML/CFT obligations, e.g:

⁸⁵ <http://www.jerseyfinance.je/quarterly-reports--and-statistics>

- Company that is general partner or trustee of unregulated fund: The general partner or trustee - acting as an operator to a fund - must have its registered office provided by a fund services provider that is registered with, and supervised by, the Commission and is itself subject to AML/CFT obligations. The fund services provider must hold at least the class of manager of a managed entity. The fund itself is not excluded.
 - restricted investment business: the exempted person will be provided with a regulated service by a registered trust company or fund services business that is itself subject to AML/CFT obligations and required to apply CDD measures to the exempted person's customers.
- iv. The person carrying out the activity is acting only as principal or for a connected person and not for third parties, e.g:
- dealing in investments with a connected company (one in the same group)
 - dealing as principal with own assets
 - funds managed by an individual to provide a pension solely for that individual and his/her dependants.
480. The evaluation team partially agrees with the conclusions of the IMF 2009 Detailed Assessment Report of Jersey, that some of the activities excluded from Schedule 2 of the Proceeds of Crime Law are adequately classified as low risk in line with the FATF Standards, which states that when a financial activity is carried out by a person or entity on an occasional or very limited basis such that there is little risk of money laundering activity occurring, a country may decide that the application of certain AML measures is not necessary.
481. However concerns remain regarding nine activities which are excluded from the AML/CFT scope, although the risk is not always proved to be low. According to the Standards, "only in strictly and justified circumstances, and based on a low risk of ML/FT", a country may decide not to apply some or the entire AML/CFT obligations to such financial activities. Therefore, the assessment team believes that any financial activity whose low risk has not been proved, cannot be fully exempted from the obligations set out in the Money Laundering Order.

Customer Due Diligence and Record Keeping

3.1 Customer due diligence, including enhanced or reduced measures (R.5)

3.1.1 Description and analysis

Recommendation 5 (rated PC in the IMF report)

Summary of 2009 factors underlying the rating

482. The rating of R.5 was PC based on a number of shortcomings with respect to the availability of concessions from conducting full CDD which represented an overly-generous implementations of the FATF's facility to apply reduced or simplified measures for certain low-risk scenarios; to the availability of some concessions 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 FATF standards; to the exceptions from conducting full CDD which are not conditioned on the absence of specific higher risk scenarios; to the list of high-risk customers in the Money Laundering Order that omits some significant high-risk business categories of relevance in Jersey; to a tighter implementation that was needed regarding timing of completion of CDD measures for existing customers.

Anonymous accounts and accounts in fictitious names (c.5.1)

483. Article 23B of the Money Laundering Order provides that a relevant person must not set up an anonymous account or an account in a name which it knows, or has reasonable cause to suspect, is fictitious. Article 13 of the Money Laundering Order requires identification measures to be applied to existing customers (those accounts established before the Money Laundering Order came into force) at times that are appropriate having regard to the degree of risk of ML and FT. The authorities confirm that if any anonymous accounts or fictitious accounts existed before 4 February 2008, remedial action will have been applied.
484. The legislation does not regulate the existence of numbered accounts and there is no reference in any other secondary legislation. According to the authorities numbered accounts, whilst uncommon, do exist and are used for security reasons, however they are subject to measures under Money Laundering Order and other legislation.
485. Article 23B prohibits any anonymous account (including a passbook).

Customer due diligence

When CDD is required (c.5.2*)

c.5.2 (a)

486. Article 13 of the Money Laundering Order prescribes that a relevant person must apply identification measures before the establishment of a business relationship.
487. “Identification measures” is defined under Article 3 of the Money Laundering Order and is equivalent to CDD measures used in the FATF Methodology.
488. According to Article 1 of the Money Laundering Order, a “business relationship” is defined as a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration.

c.5.2 (b)

489. Article 13(1)(a) of the Money Laundering Order requires relevant person to apply identification measures before carrying out a “one-off transaction” equal to or above the threshold of €15,000 (except for money service business where the threshold is €1,000).
490. Pursuant to Article 4 of the Money Laundering Order, “one off-transaction” includes two or more linked transactions equal to, or more than €15,000, so that Article 13 requires application of identification measures as soon as reasonably practicable where at any later stage it comes to the attention of the relevant persons that 2 or more transactions were linked.

c.5.2 (c)

491. Requirement for undertaking CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the SRV is covered under Regulation 6 of the Wire Transfer Regulations. According to this Regulation, when the amount exceeds of €1000, relevant persons must verify information on the payer on the basis of documents, data or information obtained from a reliable and independent source.

c.5.2 (d)

492. According to Article 13(1)(c)(i) of the Money Laundering Order, relevant persons are required to apply identification measures when there are suspicions of money laundering (which is defined to include both money laundering and financing of terrorism offences), excluding the case when the relevant person has made a report to a designated police officer or a designated customs officer and acting with the permission of that authorized officer.

c.5.2. (e)

493. Article 13(1)(c)(ii) of the Money Laundering Order requires relevant persons to apply identification measures when there are doubts about the veracity or adequacy of documents, data or information previously obtained under the customer due diligence measures.

Identification measures and verification sources (c.5.3)*

494. Article 13 of the Money Laundering Order requires a relevant person to find out the identity of its customer.
495. A customer is defined as a person. Article 3(4) requires finding out a person's name and legal status on the basis of documents, data or information from a reliable and independent source, obtaining evidence that is reasonably capable of verifying and be satisfied that the person to be identified is who the person is said to be.
496. Furthermore, the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Businesses (Handbook for Regulated Financial Services Business) requires finding out relevant identification data when the customer is an individual or group of individuals: (i.e. legal name, address, date and place of birth, nationality, sex and personal identification number).
497. For verifying that an individual to be identified is who the individual is said to be where that evidence is one of the following documents: current passport, current national identity card, current driving licence.
498. In order to obtain a wide range of information the Handbook for Regulated Financial Services Business mentions that independent and reliable data sources can be used (e.g. registers of electors, business information service providers, credit reference agencies, commercially available data sources).
499. Identification and verification of identity measures of legal persons and arrangements are stipulated under section 4.4 and 4.5 of the Handbook for Regulated Financial Services Business (assessed under c.5.4)

Identification of legal persons or other arrangements (c.5.4)

500. Article 3(2)(c) of the Money Laundering Order provides that in the case of non-individual customers, relevant persons are required to identify any person purporting to act on behalf of the customer and verify the authority of any person purporting so to act.
501. Jersey law recognises a number of distinct forms of legal persons, in particular, the company, the foundation, the limited liability partnership, the separate limited partnership and the incorporated limited partnership. In relation to legal arrangements, two forms are recognized under Jersey law: trust and the limited partnership.
502. It should be noted that in forming business relationship or carrying out a one-off transaction with a trustee or general partner, a relevant person will be dependent on information provided by the trustee or general partner (usually a trust and company service provider) relating to the legal arrangement and persons concerned with the legal arrangement.
503. Information to be collected by the relevant person when the customer is a legal person is specified under section 4.5 of the Handbook for Regulated Financial Services Business. In such cases, identity of the legal person comprises: name of the legal person, any trading names, date and country of incorporation/registration, official identification number, registered office address, mailing address, principal place of business/operations and names of all directors or council members.
504. The Handbook for Regulated Services Business further elaborates that a relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying that a company

which is a customer to be identified is who the company is said to be where it obtains two or more sources of evidence (one or more source(s) for lower risk customers):

- Certificate of incorporation (or other appropriate certificate of registration or licensing) or copy of such a certificate certified by a suitable certifier.
- Memorandum and Articles of Association (or equivalent) or copy of such documents certified by a suitable certifier.
- Latest audited financial statements or copy of such statements certified by a suitable certifier.

505. Specific measures for the identification of legal arrangements are stipulated under section 4.4 of the Handbook for Regulated Financial Services Business. A legal arrangement cannot form a business relationship or carry out a one-off transaction itself. It is the trustee of the trust or the general partner of the limited partnership who will enter into a business relationship or carry out the one-off transaction with a relevant person on behalf of the legal arrangement and be considered the customer. Thus, the trust or limited partnership will be considered to be the third party on whose behalf the trustee or general partner acts.

506. The Handbook for Regulated Financial Services Business provides that a relevant person has to identify a legal arrangement collecting at least the following information: name of the legal arrangement, date of establishment, official identification number and mailing address.

507. For a person who is acting for a legal arrangement (trust or limited partnership) a relevant person must: find out and obtain evidence of the identity of the legal arrangement for which the customer acts, understand the nature of the arrangement under which the legal arrangement is constituted, and obtain satisfactory evidence of the appointment of the trustee or general partner and verify that the persons purporting to act have due authorisation.

Identification and verification of the identity of the beneficial owner (c.5.5, c.5.5.1 and c.5.5.2)

508. Article 3(2)(c)(ii) of the Money Laundering Order requires that financial institutions are obliged to understand the ownership and control of structure of a customer that is not an individual and to identify the individuals who are the customer's beneficial owners or controllers.

509. In addition, the Handbook for Regulated Financial Services Business gives guidance to financial institutions to understand the ownership, which involves three separate steps: requesting information from the customer (or a professional); validating that information and checking that information held makes sense by considering its purpose and commercial rationale.

510. In the case of a customer that is not an individual, Article 13 of the Money Laundering Order requires a relevant person to: (i) find out the identity of individuals who are the customer's beneficial owners or controllers; and (ii) take reasonable measures to verify the identity of such individuals obtaining evidence that is reasonably capable of verifying that the individual to be identified is who the person is said to be and satisfies the relevant person for the identification of that person.

511. Article 13 of the Money Laundering Order requires a relevant person to determine whether a customer is acting (directly or indirectly) on behalf of a third party. In such cases:

- Where the third party is an individual, a relevant person must (i) find out the identity of that individual and (ii) take reasonable measures to verify that individual's identity.
- Where a third party is a non-individual person (a legal person), a relevant person must (i) find out the identity of the legal person and take reasonable measures to verify its identity, (ii) understand the ownership and control of the third party, and (iii) find out the identity of each individual who is that third party's beneficial owner or controller and take reasonable measures to verify identity.

- Where a third party is not a person (a legal arrangement), a relevant person must (i) find out the identity of the legal arrangement, (ii) understand the nature of the arrangement under which the legal arrangement is constituted, (iii) identify each person falling within Article 3(7) of the Money Laundering Order and (iv) in respect of each person falling within Article 3(7) who is not an individual, understand the ownership and control of that person and identify each individual who is the person's beneficial owner or controller.
512. A person falls within Article 3(7) of the Money Laundering Order if that person: (i) in relation to a trust, is a settlor or a protector, (ii) has a beneficial interest in the third party; (iii) in relation to a trust, is the object of a trust power; or (iv) is an individual who otherwise exercises ultimate effective control over the third party.⁸⁶
513. The definition of beneficial owner in the Money Laundering Order only comprises the case of legal persons and not legal arrangements. Notwithstanding this fact, the assessors are of the opinion that identification of beneficial owners of a legal arrangement, e.g a trust, is covered under Article 3(7) of the Money Laundering Order.
514. Article 2 of the Money Laundering Order defines beneficial owner as:
- (1) *For the purposes of this Order, each of the following individuals is a beneficial owner or controller of a person ("other person") where that other person is not an individual –*
 - (a) *an individual who is an ultimate beneficial owner of that other person (whether or not the individual is its only ultimate beneficial owner); and*
 - (b) *an individual who ultimately controls or otherwise exercises control over the management of that other person (whether the individual does so alone or with any other person or persons).*
 - (2) *For the purposes of paragraph (1) it is immaterial whether an individual's ultimate ownership or control is direct or indirect.*
 - (3) *No individual is to be treated by reason of this Article as a beneficial owner of a person that is a body corporate the securities of which are listed on a regulated market.*
 - (4) *In determining whether an individual is a beneficial owner or controller of another person, regard must be had to all the circumstances of the case, in particular the size of an individual's beneficial ownership or degree of control having regard to the risk of that individual or that other person being involved in money laundering.*
515. Although this definition does not comprise "the person on whose behalf a transaction is being conducted", this is covered under Article 3(2)(b) of the Money Laundering Order (see above).
516. In line with the legal provisions set out in the Money Laundering Order, section 4.5 of the Handbook for Regulated Financial Services Business provides further guidance related to the identification of the beneficial owner or controller when the customer is a legal person. A relevant person may demonstrate that it has found out the identity of a legal person's beneficial owners or controllers where it finds out the identity of:
- (i) Persons holding a material controlling ownership interest in the capital of the company or controlling through other ownership interests or, in case of doubt, persons exercising control through other means. If no person is identified by these means, the relevant person must identify the persons who exercise control through positions held.
 - (ii) Where a person identified according to the above point (i) is not an individual, a relevant person may demonstrate that it has identified each individual who is that persons beneficial owner or controller (by the same means).

⁸⁶ Point "iv" was introduced after the onsite meeting and within the 2 months period.

517. However, in the case of a lower risk relationship, directors who have and exercise authority to operate a relationship or one-off transaction will be those who exercise control through position held.
518. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a legal person. Where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.
519. At the time of the onsite visit, section 4.4 of the Handbook for Regulated Financial Services Business provided guidance in regards to identify the beneficial owner of a trust. Thus in line with paragraph 81, in case where a settlor, beneficiary or object of a power of a trust which is a third party was not an individual, guidance explained that a relevant person may demonstrate that it had identified each individual who was that person's beneficial owner where it had identified each individual with a material interest in the capital of that person.
520. A general threshold of 25% was considered to indicate a material interest in capital, although it could be less, e.g., where the distribution of interests was uneven.
521. The assessment team considered that paragraph 81 of section 4 of the Handbook for Regulated Financial Services Business was not in line with the Standards given that the lack of express guidance on how to identify the natural person exercising ultimate effective control over the trust (including through a chain of control/ownership).
522. Within a period of two months after the onsite visit, the Handbook for Regulated Financial Services Business was amended, as follows:

*Section 4.4.1. paragraphs 81 and 82 of the AML/CFT Handbook: "In any case where a settlor, protector, beneficiary, or object of a power, or other person referred to in paragraphs 76 to 79 (the "**person**") of a trust which is a third party is not an individual, a relevant person may demonstrate that it has identified each individual who is that the person's beneficial owner or controller under Article 3(2)(b)(iii)(C) of the Money Laundering Order where it has identified:*

 - (i) Each individual with a material controlling ownership interest in the capital of that the person (through direct or indirect holdings of interests or voting rights) or who exerts control through other ownership means.*
 - (ii) To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the person through other means.*
 - (iii) Where no individual is otherwise identified under this section, individuals who exercise **control** of the person through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).*

For lower risk relationships, Aa general threshold of 25% is considered to indicate a material controlling ownership interest in capital. However, where the distribution of interests is uneven, the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests".
523. Due to its recent introduction, the effectiveness of this provision could not be assessed during the on-site visit.
524. When establishing relationships with a cell of a Protected Cell Company (PCC), financial institutions will consider the PCC to be a customer acting on behalf of a third party, and each cell will be taken to be as the third party. In these cases, and following Article 3 of the Money Laundering Order, identification measures must be applied to the PCC (customer) and each cell of

the PCC (a third party). And given that each cell of the PCC is a person other than an individual, financial institutions must identify and verify the beneficial owners of each legal cell..

Information on purpose and nature of business relationship (c.5.6)

525. Article 13 (through Article 3(2)(d)) of the Money Laundering Order requires a relevant person to obtain information on the purpose and intended nature of a business relationship or one-off transaction.

526. There are no specific provisions in the Handbook for Regulated Financial Services Business further clarifying requirements, nonetheless, in different sections of the Handbook for Regulated Financial Services Business the JFSC suggests to financial institutions to understand the commercial rationale to effectively obtain the purpose and intended nature of a business relationship. It should be noted that the legislation obliges gathering this information even when the relevant person applies simplified due diligence measures, as described under c.5.9.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

527. Article 13 (through Article 3(3)) of the Money Laundering Order requires applying ongoing monitoring. Furthermore, section 6 of the Handbook for Regulated Financial Services Business outlines the statutory provisions concerning on-going monitoring, which consists of: (i) scrutinising transactions undertaken throughout the course of a business relationship and (ii) keeping documents, data or information up to date and relevant.

c.5.7.1

528. Article 13 (through Article 3(3)(a)) of the Money Laundering Order requires a relevant person to scrutinise transactions undertaken in the course of a business relationship to ensure that the transactions are conducted in a way that is consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile (including source of funds, where necessary).

529. The Handbook for Regulated Financial Services Business provides guidance to assure that a relevant person, as part of its scrutiny of transactions and activities, applies appropriate procedures to monitor all of its customers' transactions and activity and to recognise and examine notable transactions or activity. In this regard, unusual transactions or activity, unusually large transactions or activity and unusual patterns of transactions or activity may be recognised when these are inconsistent with the expected pattern or activity for a particular customer, or with the normal business activities for the type of product or service that is being delivered.

c.5.7.2

530. Article 13 (through Article 3(3)(b)) of the Money Laundering Order requires a relevant person to ensure that documents, data and information obtained under identification measures are up to date and relevant by undertaking reviews of existing records.

531. In addition Article 15 of the Money Laundering Order requires the application of enhanced CDD measures in any situation which presents a higher risk of ML or FT. In this case, according to the Handbook for Regulated Financial Services Business relevant persons may demonstrate that its information remains up to date where it is reviewed and updated on at least an annual basis.

Risk – enhanced due diligence for higher risk customers (c.5.8)

532. Article 15 of the Money Laundering Order requires relevant persons to apply enhanced customer due diligence measures to a number of specific relationships and in any situation which, by its nature (taking into account factors such as country risk, product or service risk, delivery risk and customer specific risk), can present a higher risk of ML or FT.

533. According to Article 15 of the Money Laundering Order, ECDD measures must be applied, inter alia, in the below specific relationships:

a. Where the customer is a non-resident

534. The Handbook for Regulated Financial Services Business provides guidance on the application of additional measures which must always be commensurate with the risk, but may include: determining the reasons why the customer is looking to establish a business relationship other than in their home country; and/or, the use of external data sources to collect information on the customer and country risk in order to get a proper risk profile similar to the available to a resident customer.

b. Where the customer has relevant connections with a high risk country designated by FATF

535. In such cases, ECDD measures may include approval of the senior management and reasonable measures to find out the source of funds and wealth of the customer. Additionally, enhanced identification measures should be taken and the business relationship should be reviewed on at least an annual basis. For the purpose of applying Article 15(3A) of the Money Laundering Order, countries or territories in relation to which the FATF has called for the application of enhanced CDD measures are those listed in Appendix D1 (at the time of the onsite visit Iran and North Korea were included in Appendix D1) to the AML/CFT Handbooks.

c. Where the customer is provided with private banking services

536. Additional measures must be commensurate with the risk, but may include: taking reasonable measures to find out the source of funds and wealth; reviewing the business relationship on at least an annual basis; and where monitoring thresholds are used, setting lower thresholds for transactions connected with the business relationship.

d. Where the customer is a personal asset holding vehicle

537. Where the customer is a legal person or arrangement established for the purpose of holding assets for investment purposes, relevant persons must apply measures that are commensurate with the risk which may include the following additional measures: understanding the structure of the vehicle; determining the purpose and rationale for making use of such a vehicle, and being satisfied that the customer's use of such an investment vehicle has a genuine and legitimate purpose; and/or taking reasonable measures to find out the source of funds and wealth.

e. Where the customer is a company with nominee shareholders or issues bearer shares

538. In case of customers that are companies with nominee shareholders, relevant persons have to apply ECDD which is commensurate with risk, and additional measures may include: determining and being satisfied with the reasons why the customer is making use of nominees; and using external data sources to collect information on the fitness and propriety of the nominee and the particular country risk.

539. In case of customers that are companies formed by bearer shares, additional measures must be commensurate with risk and may include: determining and being satisfied with the reasons why the customer has issued bearer shares; and/or ensuring that any new or continued relationship is approved by the senior management of the relevant person, and reviewing the business relationship on at least an annual basis.

540. The Handbook for Regulated Financial Services Business further clarifies that a customer will not be considered to be a customer that issues bearer shares, when: (i) the bearer shares are issued by a company in a country that has fully enacted appropriate legislation to require bearer shares to be registered in a public registry; or (ii) the bearer shares are traded on an approved stock exchange; or (iii) all issued bearer shares are held in the custody of the relevant person, or trusted external party, who undertakes to inform to the relevant person of any transfer or change in ownership.

- f. Where the customer has not been physically present for identification purposes⁸⁷
 - g. Where the customer, or some other prescribed persons, is a PEP⁸⁸
 - h. Where the relationship covers correspondent banking⁸⁹
541. Although all these customers or business relationships (from letters *a* to *e*) are considered to be potentially higher risk customers and therefore specific and adequate ECDD to compensate must be applied according to the Money Laundering Order, guidance in the Handbook for Regulated Financial Services Business is very flexible, and in practice the range of additional measures suggested seems to be limited.
542. It should be noted that according to section 7.11 of the Handbook for Regulated Financial Services Business all ECDD measures to be applied in the case of non-resident customers, private banking services, asset holding vehicles and a company formed with nominee shareholders or by bearer shares, are new as they entered into force on 27 October 2014, and relevant persons are not obliged to apply them retrospectively and no specific remediation project is required.
543. However, in cases where relevant persons become aware – as part of periodic reviews – that documents, data or information previously obtained do not satisfy the additional CDD requirements, relevant persons will need to apply ECDD measures to that customer at that time in line with Article 13(1)(c)(ii) of the Money Laundering Order.
544. Following the recommendation made by the IMF in the previous MER, all categories exemplified under the c.5.8 of FATF Methodology have been included as potentially higher risk customers. The assessment team welcomes this step taken by Jersey authorities; however, it considers that the additional measures described in the Handbook for Regulated Financial Services Business are not sufficient to mitigate risks, and may raise effectiveness related concerns.
- Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)*
545. Articles 17 and 18 of the Money Laundering Order set out exemptions from the full CDD measures in certain circumstances.
546. Article 17 of the Money Laundering Order sets out that full identification measures need not be applied in specific cases where the customer is a relevant person or equivalent business and a number of specific conditions are satisfied. Article 18 provides that certain CDD requirements need not be applied with regard to the low risk transactions or customer types.
547. Both Article 17 and parts of Article 18 of the Money Laundering Order may be applied to a customer who is a relevant person or equivalent business. The term “equivalent business” is defined in Article 5 of the Money Laundering Order; a business is equivalent business in relation to any category of financial services business carried on in Jersey if:
- The other business is carried on in a country or territory other than Jersey;
 - If carried on in Jersey, it would be financial services business of that category;
 - In that other country or territory, the business may only be carried on by a person registered or otherwise authorised for that purpose under the law of that country or territory;
 - The conduct of the business is subject to requirements to forestall and prevent ML and FT that are consistent with those in the FATF Recommendations in respect of that business; and
 - The conduct of business is supervised for compliance with AML/CFT requirements by an overseas regulatory authority.

⁸⁷ Included for information purposes only, not re-assessed as it's related to R.8 rated as LC in the previous MER.

⁸⁸ Included for information purposes only, not re-assessed as it's related to R.6 rated as LC in the previous MER.

⁸⁹ Included for information purposes only, not re-assessed as it's related to R.7 rated as C in the previous MER.

Where the customer is a relevant person or equivalent business (Article 17 of the Money Laundering Order)

548. A relevant person need not apply the parts of Article 13 and Article 15 of the Money Laundering Order which obligate the finding out of the identity of, and obtaining the evidence of identity for, the third party (or parties) and their beneficial owners, for which the customer acts.
549. Article 17 of the Money Laundering Order does not permit refraining from all customer due diligence measures, but only from identification of third parties as stipulated under Article 3(2)(b) of the Money Laundering Order. Thus, in the cases when Article 17 of the Money Laundering Order is applied, identification of the customer, identification of the beneficial owners and controllers of the customer and on-going monitoring of a business relationship will be conducted and information on the purpose and intended nature of the business relationship will be obtained.
550. Simplified identification measures may be applied (subject to other conditions) where a relevant person has reasonable grounds for believing that its customer is:
- a. A relevant person for which the Commission discharges supervisory functions in respect of the financial services business that it carries on.
 - b. A person who carries on equivalent business.
 - c. A person who is wholly-owned by a person listed above and: (i) is incorporated or registered in the same country or territory as its parent; (ii) has no customers who are not also customers of its parent; (iii) carries on activities that are ancillary to the business of its parent; and (iv) in respect of that activity, it maintains the same policies and procedures as its parent.
551. As specified under Article 17(9A) before applying simplified identification measures, a person must also:
1. Consider the value and extent of each third party's financial interest in the product, arrangement, account or other investment vehicle offered to the customer by the relevant person.
 2. Where the relevant person considers that the value or financial interest of the third party is significant, find out the identity of that person.
552. In line with a requirement in Article 17(4) and (9) of the Money Laundering Order to assess the risk involved in simplifying identification measures, the Handbook for Regulated Financial Services Business provides guidance on the factors to be taken into account when assessing the risk of ML or TF that is inherent in the customer's business and risk of ML or FT should the customer fail to apply CDD or keep records. Immediately before applying simplified identification measures, a relevant person may demonstrate that:
553. a) it has had regard to a customer's business where it considers the following factors:
- (i) General risk appetite of its customer;
 - (ii) geographic location and nature of the customer base;
 - (iii) nature of the services that the customer provides to third parties (its customers);
 - (iv) extent to which its customer carries on business on a non-face to face basis;
 - (v) extent to which specific relationships may involve PEPs or higher risk third parties.
- b) it has had regards to the higher risk of ML and FT should its customer fail to apply identification measures, keep records, or keep records for the required period where it considers the following factors:
- Stature and regulatory track record of its customer.
 - Adequacy of: (i) the framework to combat ML and FT in place in the jurisdiction in which its customer is based and the period of time that the framework has been in place, (ii) the supervisory regime to combat ML and FT to which its customer is subject and (iii) the identification measures applied by its customer to combat ML and FT.

- Extent to which the customer itself relies on obliged parties (however described) to identify its customers and to hold evidence of identity, and whether such obliged parties are relevant persons or carry out an equivalent business.

554. Finally, it should be noted that the Money Laundering Order prohibits the application of simplified identification measures in circumstances that are set out in Article 17(14). These include cases where the customer is resident in a country that is not compliant with the FATF Recommendations. The Handbook for Regulated Financial Services Business, issued by the JFSC, states that a country or territory is not compliant with the FATF Recommendations where it is listed in Appendix D1 (Iran and North Korea) and Appendix D2 (list of countries identified the FATF).

Table . Financial institutions may apply simplified identification measures in the following 4 cases:

	<i>FIs that may apply Simplified identification</i>	<i>Type of customer acting on behalf of a third party to whom Simplified identification can be applied</i>	<i>Conditions to be met before applying Simplified identification</i>
case 1	All Financial institutions	i. Deposit taking business, insurance business, funds services business, investment business, registered by the Commission. ii. Holders of certificate or permit under the Collective Investment Funds Law iii. Equivalent business to the above numbers i. and ii.	Assess the risk and make a written record of why simplified measures are appropriate having regard to the risk of ML/TF inherent in the customer's business and the higher risk of ML or FT should the customer fail to apply CDD and record-keeping requirements.
case 2	All Financial institutions	i. Unregulated funds or scheme or arrangement that would be a collective investment scheme but for the fact that there is no offer to the public of units. ii. Equivalent business to the above. Where there is little risk of ML or TF occurring.	i. Written record of why simplified measures are appropriate (in line with case 1). ii. For customer that is a relevant person: obtain written assurance that customer has applied identification measures under the Money Laundering Order to third parties. For equivalent business: written assurance that the customer satisfies FATF R.5 and R.6 ⁹⁰ . iii. Obtain written assurance that all necessary information found out will be provided if so requested and evidence of identity will be provided without delay. iv. Testing of assurances: e.g. of the policies and procedures, no impediments of secrecy provisions and record keeping.

⁹⁰ FATF Recommendations 2004.

	<i>FIs that may apply Simplified identification</i>	<i>Type of customer acting on behalf of a third party to whom Simplified identification can be applied</i>	<i>Conditions to be met before applying Simplified identification</i>
case 3	Deposit-taking business	i. Trust company business registered by the Commission ii. Equivalent business to the above. Where there is little risk of ML or TF occurring.	i. Written record of why simplified measures are appropriate (in line with case 1). ii. For customer that is a relevant person: obtain written assurance that the customer has applied identification measures to third parties. For equivalent business: written assurance that the customer satisfies FATF R.5 and R.6. iii. Obtain written assurance that all necessary information found out will be provided if so requested and evidence of identity will be provided without delay. iv. Testing of assurances: e.g. policies and procedures, no impediments of secrecy provisions and record keeping.
case 4	Deposit-taking business	i. A lawyer carrying on business that is described in para 1 of part B of Schedule 2 of the Proceeds of Crime Law ii. Equivalent business to the above. Where there is little risk of ML or TF occurring.	i. Written record of why simplified measures are appropriate (in line with case 1). ii. For customer that is a relevant person: obtain written assurance that the customer has applied identification measures to third parties. For equivalent business: written assurance that the customer satisfies FATF R.5 and R.6. iii. Obtain written assurance that all necessary information found out will be provided if so requested and evidence of identity will be provided without delay. iv. Testing of assurances: e.g. policies and procedures, no impediments of secrecy provisions and record keeping.

555. In support of these cases, section 7.13 of the Handbook for Regulated Financial Services Business, gives examples of relationships that may present a little risk of ML/FT.

556. For Case 2, a relevant person may be satisfied that there is little risk of ML or FT occurring where a particular fund is closed-ended, has no liquid market for its units, and permits subscriptions and redemptions to come from and be returned only to unit holders.

557. For Case 3, a relevant person who is carrying on deposit-taking may be satisfied that there is little risk of ML or FT occurring where:

- Deposited funds are held only temporarily for one or more third parties: (i) pending the transfer to a designated account for a third party or pending the receipt of transfer instructions when an existing a customer relationship, where the funds are not to be held on an undisclosed basis for longer than 40 days; (ii) to facilitate ad hoc (not routine) cheque payments where designated accounts do not otherwise have this facility; (iii) to facilitate the aggregation of statutory fees for onward payment; (iv) to receive fees payable to the

customer which have been paid in advance; (v) to receive customer money on an ad hoc basis paid to the customer in error;

- the number and value of third party transactions effected is low, e.g. to provide third parties with access to low cost banking facilities where third parties' liquid assets are of insufficient value and volume for the establishment of a designated relationship (e.g. balances of £1,000 or less per relationship, with little activity); or
- Deposited funds are aggregated in order to attract a better return on investment for third parties, and where the aggregated deposit is received from and paid back (including income or profit generated) to an account held with another person carrying on deposit-taking business who is registered to do so by the Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Supervision Commission.

558. For Case 4, a relevant person who is carrying on deposit-taking business may be satisfied that there is little risk of ML or FT occurring where the deposit is in respect of a third party's registered contract within the meaning of the Control of Housing and Work (Jersey) Law 2012.

Low risk situations and customers (Article 18 of the Money Laundering Order.)

559. In a number of prescribed cases, (Table) Article 18 of the Money Laundering Order provides that a relevant person need not apply certain identification measures required under Article 13 (through Article 3).

560. Article 18 of the Money Laundering Order does not permit refraining from all customer due diligence measures. When Article 18 of the Money Laundering Order is applied, on-going monitoring of a business relationship will be conducted and information on the purpose and intended nature of the business relationship will be obtained.

Table. Simplified identification measures in low risk situations

	Simplified Identification measures	Cases / Types of customers
Case 1	No identification measures required –except identifying the purpose and intended nature of the business relationship or one-off transaction.	<p>1. When the business relates to a pension, superannuation, employee benefit, share option or similar scheme: (i) where contributions are made by an employer or by way of deduction of wages, and (ii) the scheme rules do not permit the assignment of members' interests under the scheme except after the death of the member. Where it is proposed to assign the interest of a deceased member, identifications measures must be applied to the proposed assignee,</p> <p>2. When the application is for an insurance business policy: (i) taken out in connection with a pension scheme relating to the customer's employment or occupation, if the policy contains no surrender clause and cannot be used as security for a loan; (ii) where the premium is a single payment of no more than £1,750, or (iii) where the premium payments do not exceed £750 in any calendar year.</p>

	Simplified Identification measures	Cases / Types of customers
Case 2	<p>No identification required for the body, beneficial owners and controllers or those acting on behalf of the customer.</p> <p>Verification of the authority of the person purporting to act on behalf of the customer is required, identification measures must be applied to third parties, and the purpose and intended nature of the business relationship or one-off transaction must be obtained.</p>	<p>When the customer is a :</p> <ol style="list-style-type: none"> 1. Public authority in Jersey 2. A body corporate, the securities of which are listed on IOSCO compliant market or a regulated EU market 3. A person wholly owned by a body corporate described above
Case 3	<p>No identification required for the body, beneficial owners and controllers and those acting on behalf of the customer.</p> <p>Identification measures must be applied to third parties, and the purpose and intended nature of the business relationship or one-off transaction must be obtained.</p>	<p>When the customer is a:</p> <ol style="list-style-type: none"> 1. Regulated person 2. Person carrying on an equivalent business to any category of regulated business 3. Wholly owned wholly owned by a regulated person or person carrying on an equivalent business and: (i) is incorporated or registered in the same country or territory as its parent; (ii) has no customers who are not also customers of its parent; (iii) carries on activities that are ancillary to the regulated business or equivalent business of its parent; and (iv) in respect of that activity, it maintains the same policies and procedures as its parent.
Case 4	<p>No identification required for those acting on behalf of the customer to the extent that they are authorised to act in the course of employment by a regulated person (or equivalent business).</p> <p>Verification of the authority of the person purporting to act on behalf of the customer is required</p>	<p>Where the customer is administered by a person that is a regulated person, or carries on equivalent business to any category of financial or other regulated business.</p>

561. It must be noted that case 3 of Article 18 of the Money Laundering Order does not require verification of the authority of the person purporting to act on behalf of the customer, which is not in line with the FATF standards.

562. Article 18(9) of the Money Laundering Order states that a relevant person cannot apply any of the above simplified identification measures where it suspects money laundering, in any situation which by its nature can present a higher risk of money laundering, where the customer is resident in a country that is not compliant with the FATF Recommendations, or where there is a relevant connection to a country or territory that is an enhanced risk state (at the time of the onsite visit those countries were North Korea and Iran).

563. In any case, the Money Laundering Order clearly stipulates that financial institutions have to conduct a certain degree of ongoing monitoring and identifying the purpose and nature of the business is still mandatory where SDD may be applied. However, if the conditions to apply

Article 18 of the Money Laundering Order are met, in some circumstances financial institutions can avoid the identification of the beneficial owners or controllers.

564. While this approach is widely used among the financial industry, according to the FATF Recommendations, FIs must apply identification measures to all their customers, and in cases of low risk and where simplified due diligence is permissible adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified, but not provide full exemptions. Regarding collective investment schemes, Jersey authorities indicated that all regulated CIS submit quarterly statistics to the JFSC which are then published on its website. Statistics show that there are approximately 650 regulated Jersey CIS each of which have more than 50 investors. There are a further 150 Jersey CIS with fewer than 50 investors.

565. Given that this specific situation is not detailed under the FATF Recommendations, the general rule should apply, and therefore, exemption of any CDD measures should not be permitted under any circumstances, only reduced. On another side, it is important to emphasize that other international norms and practices (e.g. IOSCO publication of 2005, Wolfsberg guidance published in 2006, consultative document of the Basel Committee on Banking Supervision of July 2015, and although not yet in force, ESAs draft guidelines concerning the application of simplified and enhanced CDD measures) in certain circumstances allow the approach adopted by Jersey, thus, where the customer of a relevant person is a financial institution, the relevant person need not collect information on underlying third parties.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

566. As described under criterion 5.9, Articles 17 and 18 of the Money Laundering Order provide for simplified identification measures to be applied to customers resident in another jurisdiction.

567. The application of the simplified identification measures is subject to a customer's country of residence. Article 5 of the Money Laundering Order sets out the criteria that apply to a customer who is a person carrying on equivalent business, establishing that the customer must be subject to requirements to forestall and prevent ML and FT that are consistent with those in the FATF Recommendations and must be supervised for compliance with those requirements.

568. Additionally, both Articles 17 and 18 preclude the application of simplified identification measures to a customer that is resident in a country that is not compliant with the FATF Recommendations. Appendix D1 and D2 of the Handbook for Regulated Financial Services Business provide the list of countries considered not to comply.

Risk – simplified / reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

569. Article 17(14) of the Money Laundering Order states that a relevant person cannot apply simplified identification measures where it suspects money laundering, in any situation which by its nature can present higher risk of ML, where the customer is resident in a country which is not compliant with FATF Recommendations, or where there is a relevant connection to a country or territory that is an enhanced risk state (at the time of the onsite visit, the two countries in this list were North Korea and Iran).

570. Similar provisions are contained in Article 18(9) of the Money Laundering Order, which states that a relevant person cannot apply simplified identification measures where it suspects money laundering, in any situation which by its nature can present high risk of money laundering, where the customer is resident in a country that is not compliant with FATF Recommendations or where there is a relevant connection to a country or territory that is an enhanced risk state.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

571. The Handbook for Regulated Financial Services Business, in its sections 3 and 4, broadly provides guidance on the application of a risk-based approach to CDD.

572. Section 3 of the Handbook for Regulated Financial Services Business deals with the process to be followed in conducting a risk-based approach and section 4 deals specifically with the application of a risk-based approach to the finding out and verifying the identity of a customer that is an individual, a legal arrangement or a legal person.

573. According to paragraph 18 of section 1 of the Handbook for Regulated Financial Services Business, while complying with statutory and regulatory requirements, and in applying guidance, a relevant person should adopt an appropriate and intelligence risk-based approach and should always consider what additional measures might be necessary to prevent its exploitation by persons seeking ML or FT.

574. The assessment team is of the opinion that the guidance provided through the Handbook for Regulated Financial Services Business in regards to the application of the risk-based approach, is comprehensive and detailed.

Timing of verification of identity – general rule (c.5.13)

575. Article 13(1) of the Money Laundering Order provides that relevant persons must apply identification measures before the establishment of a business relationship or before carrying out a one-off transaction.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

c.5.14

576. Article 13(4) of the Money Laundering Order provides that verification of identity may be completed as soon as practicable after the establishment of a business relationship if that is necessary not to interrupt the normal conduct of business and there is little risk of ML/FT occurring as a result of completing verification after establishing the relationship.

577. Financial institutions may delay the verification of identity process under the following circumstances:

- a. When the business relationship relates to a life insurance policy: if the identification measures relate to a beneficiary under the policy and the relevant person is satisfied that there is little risk of ML/FT. In such cases, verification measures must be completed, in any case, before any payment is made under the policy or any right vested under the policy is exercised. (Article 13(6) and (7) of the Money Laundering Order).
- b. When the business relationship relates to a trust or foundation: if the identification measures relate to a person who has a beneficial interest in the trust or foundation by virtue of property or income having been vested in that person and the relevant person is satisfied that there is little risk of ML/FT. In such cases, verification measures must be completed, in any case, before any distribution of trust property or income is made. (Article 13(8) and (9) of the Money Laundering Order).

c.5.14.1

578. Pursuant to section 4.7 of the Handbook for Regulated Financial Services Business, where verification of identity is delayed, relevant persons may demonstrate that ML/FT risk is effectively managed by: (i) establishing policies and procedures establishing timeframes for obtaining evidence of identity; (ii) requiring appropriate authorisation for such a business relationship and monitoring it appropriately so that evidence of identity is obtained as soon as is reasonably practicable and (iii) placing appropriate limits or prohibitions on the number, type and amount of transactions over an account.

579. Additionally, relevant persons may not pay away funds to an external party, other than to invest or deposit the funds on behalf of a customer, until such time as evidence of identity has been obtained.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

580. Under Article 14 of the Money Laundering Order when a financial institution is unable to apply identification measures before the establishment of a business relationship or before carrying out a one-off transaction, it must not establish that business relationship or one-off transaction.
581. If a financial institution is unable to verify identity – where verification of the identification is permitted at a later stage according to the Standards- it must terminate the business relationship.
582. In this same line, when two or more transactions outside a business relationship are linked and the total amount is equal to €15.000 or more, the linked transactions must not be carried on, if identification measures cannot be applied.
583. Furthermore, if the relevant person suspects ML or FT, or has doubts about the veracity or adequacy of documents, data or information previously obtained, and it is unable to apply identification measures in respect of any business relationship or one-off transaction, the relevant person shall not establish or shall terminate that business relationship, or shall not carry out that transaction, as the case requires and consideration should be taken in regards to make a report to JFCU, in line with Part 5 of the Money Laundering Order.
584. Notwithstanding the above, a relationship may be established with the consent of the JFCU, in order to prevent the customer from being alerted of the relevant persons suspicion, which would jeopardise the investigation.

Application and performance of CDD requirements to existing customers – (c.5.17)

585. FIs are required to apply CDD requirements at appropriate times with an existing customer⁹¹ as set out in Article 13(2) of the Money Laundering Order.
586. In the context of identification measures, the Law defines “appropriate times” as:
- i. times that are appropriate having regard to the degree of risk of ML or FT, taking into account the type of customer, business relationship, product or transactions concerned, and
 - ii. any time when suspicions of ML or FT arises.
587. Article 13(3A) of the Money Laundering Order also states that appropriate time to find out the identity is a date no later than 31 December 2014, or such later date as may be agreed by the Commission. The Commission has approved remediation plans for five banking groups, the last of which will conclude during 2018. This provision was introduced to deal with the remediation of business relationships that were already established at the time that the Money Laundering Order came into force on 4 February 2008 (“pre-existing customers”).
588. Article 13(3B) of the Money Laundering Order further explains that a relevant person may have found out the identity of a customer where the information that it holds in relation to a customer is commensurate to the financial institution’s risk assessment.
589. In the context of on-going monitoring, “appropriate times” means throughout a business relationship. Article 13(2B) of the Money Laundering Order applies the requirement to scrutinise transactions undertaken in the course of a relationship to existing customers, and requires documents, data and information that is held on an existing customer.

Effectiveness and efficiency

Effectiveness and efficiency c.5.1

590. The JFSC stated that it has never encountered any anonymous or fictitious accounts since the entry into force of Article 13 of the Money Laundering Order (4 February 2008).

⁹¹ Business relationships started before 4th February 2008.

591. Although numbered accounts neither are prohibited nor expressly regulated, interviews with the financial industry and their internal regulations demonstrated that they are not very commonly used. The authorities stated that only two FIs still use numbered accounts, however these are subject to full CDD requirements, being used only for security reasons.

Effectiveness and efficiency. (c.5.2, c.5.3, c.5.4, c.5.5)

592. The financial industry of Jersey demonstrated a good level of knowledge of the identification and verification requirements set out in the relevant legal provisions.

593. Many interviewed financial institutions pointed out that the vast majority of their relationships were initiated through intermediaries or with representatives from Jersey, Guernsey and UK or other equivalent countries, which implies reliance in implementation of CDD rules.

594. Some banks stated that they apply more strict CDD measures than provided in the legislation given that they rely on bank's group policies.

595. FIs pointed out that in the absence of strict regulation for opening pool accounts, banks usually are very selective, and such accounts are only permitted if the financial institution is satisfied with the reputation of the entity wishing to open the account.

596. The FIs interviewed demonstrated a good level of understanding of the definition of beneficial owner. In the vast majority of cases, the private sector representatives indicated that the threshold of 25% of material interest is not considered as sufficient for mitigating the risk, and a 10% threshold is more widely used by the industry. Also, it should be noted that some financial institutions seem to consider individuals holding shares in the company as beneficial owners, without particularly referring to the ultimate beneficial owner that might control the legal person indirectly.

597. Customer base involving legal arrangements, principally trusts, is very common in Jersey, and according to the private and public sector is considered as high risk businesses. Given the high importance of this area, during the onsite visit the assessment team focused on the degree of the understanding of the beneficial ownership concept by the FIs. Many entities, assured that when establishing business relations with a TCB acting on behalf of a trust, where the settlor is a legal person, identification of the beneficial owner holding a material interest of 25% or less is carried out in line with the provisions set out in the Handbook for Regulated Financial Services Business.

Effectiveness and efficiency. 5.6

598. The guidance provided to financial institutions suggests that failure to understand the commercial rationale implies failure to identify non-commercial and therefore potential money laundering and financing of terrorism activity.

599. FIs interviewed demonstrated knowledge on the importance of obtaining information on the commercial rationale. The importance of establishing the rationale is particularly relevant for Jersey given the inherent risks the jurisdiction is exposed to as a financial centre. The review of the internal rules and procedures of the financial industry showed that information on rationale is established not only in the course ECDD, but also during regular CDD.

600. Many parties interviewed assured that if there is no rationale the client is considered high risk and it raises concerns for establishing business relationships.

601. Meetings with the private sector confirmed that usually the rationale for opening an account in Jersey is linked to tax planning. It was positively noted that, financial entities require potential customers to provide sufficient evidence to confirm the rationale for an offshore structure in Jersey. If necessary, provided information can be verified with tax professionals.

602. From the summary of findings of some onsite examinations conducted by the JFSC, assessors could also verify that the Commission pays special attention to the understanding of the

requirement to record the reason for using an offshore jurisdiction. Entities are encouraged to document tax considerations and include tax advice as part of the customer profile. The assessors welcome the approach applied by the JFSC.

Effectiveness and efficiency c.5.7

603. All financial institutions interviewed showed awareness regarding the necessity of identifying and verifying the source of funds to have a clear picture of the purpose of the business relationship. It should be noted, that financial entities do not only verify the origin of the initial funds, but any additional funds introduced in the course of the business relationship.
604. Given that the financial industry in Jersey mainly maintains business relationships with non-resident customers, the internal rules and procedures, require identification and verification of the source of funds and source of wealth. According to the internal rules of procedures of the FIs, the requirement of identifying the SOF and SOW applies not only to high risk customers but to regular customers as well.. Thus, only the potential customers that can demonstrate documentary evidence of a legitimate source of wealth (family history, inheritance, property, investments, private income, pensions, etc.) can be accepted.
605. During the on-site mission, evaluators could verify that financial entities understand that all CDD measures are not supposed to end once the client is accepted but it is an ongoing process. The guidance given in the Handbook for Regulated Financial Services Business regarding the scrutiny of transactions and the keeping of documents, data and other information up to date seems to be effectively implemented. Financial service businesses conduct on-going monitoring of the client relationships on a risk-sensitive basis.

Effectiveness - Risk- Business risk assessment

606. Financial institutions are required to conduct a business risk assessment (BRAs). This requirement is set out under Article 11 of the Money Laundering Order, and the guidance is provided under section 2.3 of the Handbook for Regulated Financial Services Business. This business risk assessment must be conducted by the Board. In particular, the Board must consider, on an on-going basis, its risk appetite, and the extent of its exposure to money laundering and financing of terrorism risks “in the round” or as a whole by reference to its organisational structure, its customers, the countries and territories with which its customers are connected, its products and services, and how it delivers those products and services. The assessment must consider the cumulative effect of risks identified, which may exceed the sum of each individual risk element. The Board’s assessment must be kept up to date.
607. Following the information provided by the authorities, the majority of BRAs have been reviewed across all sectors in the last five years. It should be noted, that the entire banking entities have conducted their BRA and they have been reviewed by the Commission.

Effectiveness and efficiency 5.8

608. The private sector demonstrated to have a clear picture of their risk appetite. This was also reflected in the rules and procedures provided. All financial institutions were able to show the percentage of high risk customers, based on the activities and relative to the size, nature and complexity of their business. The importance to apply a risk-based approach while conducting CDD was widely understood by industry.
609. As described under the technical analysis, and following the recommendations of the IMF 2008 MER, Jersey authorities have classified under ECDD all customers and business relations exemplified as high risk in c.5.8 of the FATF Methodology. Given that this inclusion entered into force on 27 October 2014, few weeks before the on-site visit the extension of its effective implementation could not be properly assessed.

610. According to the data of a survey conducted by Jersey authorities after the onsite visit, approximately 90% of the customer relationships of financial service business are established with non-residents of Jersey, and 30% of customers have never been met face to face. The use of legal persons and arrangements represents 2% of overall customers and private banking accounts 3%, both as asset holding vehicles and as part of more complex structures; financial services provided include private banking facilities for non-residents.
611. Evaluators noticed that while establishing business with an express trust, there was no common approach among the institutions in regards to the letter of wishes or the trust deed. Some entities stated that while conducting the CDD, a copy of the trust deed is delivered in order to understand the nature of the business, and if required, also a copy of the letter of wishes. Other institutions stated that they can have a look at the trust deed, but not at the letter of wishes, a copy cannot be required given the nature of this document. The internal rules and procedures of the entities met also do not contemplate if such document is necessary. Contradictory statements were also given by the TCBs. According to the evaluators, in certain cases, the lack of this information might impact on the identification of the person who exercises ultimate effective control over the third party and on the understanding of the nature and purpose of the business relationship.
612. The assessment team considered that in some cases, information contained in the letter of wishes (information regarding the person exercising effective control over the third party or understanding the nature and purpose of the business relationship) might be relevant for the financial institutions, specially taking into account that this technique was abused as some ML cases indicate.
613. From the meetings with the financial industry, assessors noticed that there is no single approach in applying ECDD. The nature of the additional steps to be taken with higher risk customers do vary among financial institutions based on the risk assessment conducted by each entity.
614. The wording used in the Handbook for Regulated Financial Services Business is very broad and provides the FIs with the possibility to apply one or more additional measure when applying ECDD. Thus, the FIs are not required to conduct prescribed measures under ECDD procedures but to apply additional steps considering the risk of the business relationship.
615. According to the authorities, all ECDD measures are based on a risk-based approach model, therefore, it is the obligation of FIs to apply measures they consider appropriate according to the risk of each situation. Although the members of the assessment team partially agree with this approach, they are of the opinion that an obligation to apply a minimum range of additional steps with regard to all higher risk customers would benefit the system and would ensure an effective implementation of c.5.8.
616. While the additional steps that a financial institution may take to address risks which are inherent in certain relationships appear to be correct, concerns remain for the enhanced measures to be taken in cases of a company formed by bearer shares. According to the best international practices, verification of the identification of legal persons formed by bearer shares are mainly guaranteed if the financial institution takes the shares into custody. The additional measures proposed in the Handbook for Regulated Financial Services Business do not seem to properly mitigate the risk. Similar is the case of nominee shareholders, where the sole identification of the rationale for using a nominee shareholder could be considered as ECDD.
617. The FIs interviewed by assessors also explained that “complex structures” are common among the industry and such business relationships require a more detailed study and several additional steps are taken to ensure a proper understanding of the business. Usually, three or more layers under one legal person or arrangement would be considered as a complex structure.

Effectiveness and efficiency (c.5.9, 5.10, 5.11, 5.12)

618. The use of simplified due diligence measures is widely used in the international financial industry, especially among financial institutions. Despite the fact that the Standards permit to conduct simplified CDD with DNFBPs, assessors believe that this fact has been over generously treated in Jersey. This is for example the situation under case 4 of Article 17 of the Money Laundering Order, where a deposit taking business might apply simplified due diligence measures to a customer that is a lawyer from Jersey or from another equivalent country, acting on behalf of a third party.
619. Similar to the above is the case of TCBs. Although trust company business in Jersey are classified as financial services and supervised by the JFSC as any other FI, this is not the case with most trust company business in countries or territories considered to be “equivalent business”. In most countries, trust company businesses are DNFBPs and they are not supervised as a financial entity; in such cases, allowing financial institutions to conduct simplified identification measures to TCBs from all countries not classified as high risk countries, was considered uncertain by the assessment team.
620. Jersey authorities explained to the assessors that in practice the risk is very low, because the Handbook for Regulated Financial Services Business gives the list of situations when this simplified approach can be conducted. Nonetheless, it should be noted that the Handbook for Regulated Financial Services Business only exemplifies situations which does not impede FIs to use simplified due diligence with TCBs in other low risk situations. Finally, it should be noted that the majority of financial institutions interviewed stated that for applying simplified identification measures they treat as equivalent countries only Guernsey and the United Kingdom.
621. Although before applying simplified identification measures the Money Laundering Order obliges financial institutions to obtain written assurance and testing of the assurance, that the customer has applied identification measures to the third party for which it is acting, and evidence of identification measures must be provided without delay and upon request, effectiveness issues remain in case of failure to provide all necessary documents.
622. A FI can establish business relations with an intermediary and apply at the same time simplified due diligence measures. Although this is not prohibited by the standards, it is questionable that such relationships with non-resident clients are always low risk; therefore evaluators strongly recommend Jersey authorities to study in depth the risks the industry is exposed to, and if necessary, limit the scope of the use of simplified due diligence to clients and intermediaries.
623. In regards to the testing of assurance, the JFSC has issued a template with all the necessary fields to be completed by the financial institution, which appears to be uploaded in the JFSC webpage as well.
624. During the onsite meeting assessors acknowledged some contradictory statements in regards to the performance of CDD when the financial institution is categorised as a hedge fund. The parties interviewed stated that since their customer is the fund, they do not perform full CDD, and only in some cases they seek identification and verification of the ultimate beneficial owners or underlying investors, with no clear risk based approach policy. Representatives of the JFSC explained that the Commission has analysed this case and assured that, in practice, Article 17 of the Money Laundering Order was applied, given that the client of the FI was another FI entity. Assessors recommend Jersey authorities to take further steps to raise awareness among the financial institutions.

Effectiveness and efficiency (c.5.13, c.5.14, c.5.15, c.5.16)

625. FIs met during the onsite stated that their policy is to obtain appropriate due diligence information of customers before establishing a business relationship. Thus, if during the CDD process suspicions of ML or TF arises, the business relationship is not initiated or if already commenced then it is closed and consideration must be given to filing a SAR.

626. According to the internal procedures of some financial institutions, if the customer has been the subject of three or more SARs in a year, the business relationship must be terminated, unless there are exceptional reasons not to do so.
627. Evaluators had discussions with financial institutions regarding the delay of the verification of identity when the business relates to a trust. Parties interviewed showed a comprehensive understanding of the provisions set out in the Money Laundering Order and the Handbook for Regulated Financial Services Business. Thus, financial entities explained that verification of the beneficiaries is always carried out before any distribution of trust property or income is made. The concept of distribution of trust property also comprises the cases where within an express trust, a loan has been granted to a third party. In such cases verification of this third party is also conducted.

3.1.2 Recommendations and comments

Recommendation 5

628. Authorities should review again the nine activities exempted from Schedule 2 of the Proceeds of Crime Law to ensure that the application of the exemptions from AML/CFT should not be extended to activities whose low risk has not been proved. In such cases, Jersey authorities should seek other solutions, if appropriate (e.g. consider application of: Article 16 of the Money Laundering Order, partial exemptions, or others).
629. Authorities should amend the Money Laundering Order regarding simplified identification measures. A discretion to refrain from any minimum identification as established under Article 18 of the Money Laundering Order is not permitted under the FATF Recommendations although it is widely applied in other jurisdictions as well. This is particularly relevant when the customer is a collective investment scheme, therefore, when the CIS has a limited number of investors, the discretion to refrain from the identification measures should not be permitted.
630. The assessors acknowledge the amendments to the relevant provisions of the AML/CFT Handbooks with regard to the definition of the beneficial owner of trusts after the on-site visit. However authorities should ensure that FIs are effectively implementing CDD requirements of the beneficial owner irrespective of the material interest where effective control may be exercised.
631. Authorities should ensure that FIs effectively apply the recently amended ECDD measures of the AML/CFT Handbooks according to the degree of risk in each business relationship, and provide any additional guidance as necessary.
632. Financial institutions should be required to either ask for documents, such as the letter of wishes, to determine who the ultimate controlling beneficial owner is or to receive appropriate assurance and keep evidence that relevant documents (such as the letter of wishes) do not contain contradictory information with other used sources, both at the start of the relationship and during the process of ongoing due diligence.

3.1.3 Compliance with Recommendation 5

	Rating	Summary of factors underlying rating
R.5	LC	<ul style="list-style-type: none"> Some activities are exempted to be considered financial activities although the risk is not always proved to be low. <p><u>Recommendation 5</u></p> <ul style="list-style-type: none"> While applying simplified measures, under some circumstances, certain elements of the CDD can be exempted;

	Rating	Summary of factors underlying rating
		<p>rather than reduced. This is especially relevant in business relations with collective investment schemes with limited number of investors;</p> <ul style="list-style-type: none"> No obligation to verify authorisation of the person acting on behalf of the customer while applying simplified identification measures. (Article 18 case 3). <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> At the time of the onsite visit, some FIs limited the scope of identifying the beneficial owner to the person having a material interest only; Notwithstanding the mitigating measures, application of SCDD when the customer is a DNFBP from another jurisdiction has a risk given that the latter may not be subject to the same degree of regulation and supervision; FIs are not required, in relevant circumstances, to obtain a copy of the trust deed and/or letter of wishes, or take any other appropriate measure.

3.2 Third parties and introduced business (R.9)

Recommendation 9 (rated PC in the IMF report)

3.2.1 Description and analysis

Summary of 2009 factors underlying the rating

633. The deficiencies underlying the PC rating in the IMF report were the following:

- No explicit requirement to obtain CDD information immediately from intermediaries and introducers being relied on (c. 9.1);
- No provisions requiring relevant persons to adequately address the risk that intermediaries and introducers in secrecy jurisdictions may have barriers to providing CDD evidence (c. 9.2);
- The concession permitting reliance on certain categories of DNFBPs as intermediaries and introducers was not considered appropriate until their AML/CFT requirements were fully implemented (c. 9.3);
- The concession permitting reliance, as intermediary or introducer, on branch or subsidiary group member not regulated and supervised in accordance with FATF recommendations was considered not to be consistent with Recommendation 9 (c. 9.3).

Context

634. A large part of the international business in Jersey (which accounts for a significant portion of financial business) is introduced to banks and other financial institutions by domestic and foreign intermediaries and introducers. As a result, financial institutions often rely on other financial institutions or DNFBPs for the fulfilment of their CDD obligations. The effective implementation of Recommendation 9 is therefore of particular relevance in Jersey. A recent survey shows that reliance is used for more than 12% of the customer base. The reliance rate varies across the

industry, for some individual companies this percentage is much higher. No information is available on the value of their portfolio.

Legal Framework

635. Article 16 of the Money Laundering Order sets out the legal framework which permits a relevant person to rely on a third party (known as an obliged person) to fulfil its CDD obligations. This article was amended in 2013 to address the deficiencies identified in the third round evaluation.
636. Reliance may be placed on another relevant person (in Jersey) or a person carrying on equivalent business (outside Jersey). Relevant persons may only rely on information obtained to identify and verify the identity of the customer (whether a natural or legal person), a third party on behalf of whom the customer is acting, a beneficial owner, a controller or any other person purporting to act on behalf of that customer. Information on the purpose and intended nature of the business relationship must be obtained directly from the customer by the relevant person.
637. A relevant person may place reliance on an obliged person only where a number of conditions are met. The obliged person must have consented to being relied upon (Article 16(3)(a)) and applied the identification measures in the course of an established business relationship or one-off transaction (Article 16(3)(b)). The obliged person must provide CDD information on the customer to the relevant person immediately (Article 16(4)). Adequate written assurance is required from the obliged person confirming that identification and verification measures have been applied without the obliged person having itself relied upon another person for CDD purposes or having applied simplified due diligence measures. Confirmation that records of evidence of identity are kept is also required (Article 16(3)(b)). The relevant person should also be satisfied that the obliged person will keep the evidence of identity until agreed otherwise and provide the evidence without delay at the relevant person's request (Article 16(3)(d)). Before placing reliance, the relevant person is required to assess the risk of placing reliance on the obliged person having regard to ML/FT risk and the risk that the evidence required by the relevant person will not be provided (Article 16(4)). Since the relevant person is ultimately responsible for compliance with CDD requirements, the Money Laundering Order requires the relevant person to conduct tests periodically to ensure that the obliged person has policies and procedures in place for identification and verification measures, applies such procedures and will provide information to the relevant person when so requested (Article 16(5)). Sample testing is also required to verify whether a customer may be prevented, by application of law, from providing information or evidence, e.g. secrecy legislation (Article 16(6)).
638. Reliance is not permitted where a relevant person suspects ML/FT, where a relevant person considers that there is a higher risk of ML/FT or where the obliged person has a relevant connection to a country or territory that is subject to a FATF call to apply enhanced CDD measures (Article 16(9)).
639. Article 16A of the Money Laundering Order permits a relevant person to rely on a person outside Jersey who is not an obliged person (i.e. carrying on equivalent business) if that other person is a member of the same financial group as the relevant person. This arrangement is subject to a number of restrictive conditions which are described in more detail under c. 9.3.
640. The reliance provisions in the Money Laundering Order are supplemented by codes of practice and guidance set out in the Handbook for Regulated Financial Services Business. In order to assist relevant persons, the Handbook includes an information template to be completed by the obliged person when communicating information to the relevant person.

Requirement to immediately obtain certain CDD elements from third parties (c.9.1)

641. The requirement under c.9.1 was introduced into Jersey law by an amendment to the Money Laundering Order in January 2010 to address the deficiency identified in the previous assessment.

642. Article 16(3)(c) provides that a relevant person may only place reliance on an obliged person if that obliged person immediately provides in writing the information obtained as a result of the identification measures applied in pursuance of Article 3(2)(a), (b) and (c) of the Money Laundering Order (or equivalent measures, where the obliged person is not in Jersey), which measures consist of the following:

- identifying the customer;
- determining whether the customer is acting for a third party and, if so:
 - (i) identifying that third party,
 - (ii) where the third party is a person other than an individual, understanding the ownership and control of that third party and identifying each individual who is that third party's beneficial owner or controller,
 - (iii) where the third party is not a person –
 - 1) understanding the nature of the legal arrangement under which the third party is constituted,
 - 2) in the case of a trust, identifying the settlor or protector and any person who has a beneficial interest of that trust or is the object of a trust power in relation to a trust,
 - 3) in respect of each person referred to in the preceding paragraph who is not an individual, understanding the ownership and control of that person and identifying each individual who is that person's beneficial owner or controller.
- in respect of a customer that is not an individual –
 - (i) identifying any person purporting to act on behalf of the customer and verifying the authority of any person purporting so to act,
 - (ii) understanding the ownership and control structure of that customer and the provisions under which the customer can enter into contracts, or other similar legally binding arrangements, with third parties, and
 - (iii) identifying the individuals who are the customer's beneficial owners or controllers.
- in all of the cases outlined above, identification measures include:
 - (i) finding out the identity of that person, including the person's name and legal status,
 - (ii) obtaining evidence, on the basis of documents, data or information from a reliable and independent source, that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies the person responsible for the identification of a person that the evidence does establish that fact.

643. The authorities explained that the requirement to provide information immediately is taken to mean to provide information before establishing a business relationship or carrying out a one-off transaction. Paragraph 9 of section 5 of part 1 of the Handbook for Regulated Financial Services Business explains that 'information on identity found out by the obliged person must be provided to the relevant person immediately before establishing a relationship or carrying out a one-off transaction.

644. As mentioned above, the Handbook for Regulated Financial Services Business includes an information template to be completed by the obliged person when communicating information to the relevant person. The template, which sets out in detail the written assurances that are expected to be obtained by the relevant person from the obliged entity, was modified shortly before the on-site visit.

645. Relevant persons are required to obtain information on the purpose and intended nature of a business relationship or one-off transaction directly from the customer and may not rely on an obliged entity to fulfil this requirement (even though this is permitted under Recommendation 9).
646. This information would still be required by the relevant persons to collect on the basis of the Money Laundering Order, Articles 13 and 3(2)(d). In practise this means that the relevant person comes to a judgement on the basis of information directly received from the client via visits, email, or phone contact. In several cases though our interlocutors told us that they use the information channels of the obliged persons to collect the information on purpose and intended nature. It was not always clear for the assessors what the additional checks of the relevant persons where in this case and therefore what the exact difference was between placing reliance and not placing reliance. Financial institutions indicated that further guidance on this point would be beneficial.

Availability of identification data from third parties (c.9.2)

647. Article 16 requires relevant persons to take various measures to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the obliged person upon request without delay.
648. Pursuant to Article 16(3)(d), a relevant person should obtain adequate assurance in writing from the obliged person that the obliged person will:
- keep the evidence the obliged person has obtained during the course of applying the identification measures until such time as the obliged person has either provided the relevant person with evidence or has been notified by the relevant person that the relevant person no longer requires that evidence to be kept; and
 - provide the relevant person with that evidence without delay if requested to do so by the relevant person.
649. Paragraph 36 of the Handbook for Regulated Financial Services Business a relevant person may demonstrate that an obliged person will provide evidence of identity without delay where it is made available within 5 working days of a request.
650. The relevant person is also required to assess the risk of placing reliance on the particular obliged person and make a written record as to the reason the relevant person considers that it is appropriate to place reliance, having regard to the risk that the obliged person will fail to provide the evidence obtained during the course of applying the identification measures without delay if requested to do so by the relevant person (Article 16(4)(b)).
651. The Handbook for Regulated Financial Services Business (section 5.1.1., paragraph 43) sets out in guidance the factors to be taken into account when assessing risk. Immediately before relying upon an obliged person, the guidance provides that a relevant person may demonstrate that it has had regard for the higher risk of ML and FT, and risk that an obliged person will fail to provide the relevant person with evidence of identity without delay if requested to do so where it considers the following factors:
- The stature and regulatory track record of the obliged person.
 - The adequacy of the framework to combat ML and FT in place in the jurisdiction in which the obliged person is based and the period of time that the framework has been in place.
 - The adequacy of the supervisory regime to combat ML and FT to which the obliged person is subject.
 - The adequacy of identification measures applied by the obliged person to combat ML and FT.

652. In addition, the relevant person is required to conduct such tests, in such manner and at such intervals as the relevant person deems appropriate in all the circumstances in order to establish whether the obliged person:

- keeps the evidence that the obliged person has obtained during the course of applying identification measures in respect of a person, and
- provides the relevant person with that evidence without delay if requested to do so by the relevant person. (Article 16(5)(b))

653. In accordance with Article 16(6)(b), sample testing must take into consideration whether the obliged person may be prevented, by application of a law, from providing that information or evidence, as the case may be. Where as a result of a test, the relevant person is not satisfied that the obliged person has provided evidence without delay, the relevant person shall immediately apply CDD to the customer in relation to whom reliance was being placed on the obliged person (Article 16(7)). In addition, the Handbook for Regulated Financial Services Business requires relevant persons to review the basis upon which it has placed reliance on that obliged person for other relationships (if any) in order to determine whether it is still appropriate to do so, should the testing confirm that any of the conditions required under Article 16 are not being or will not be complied with (section 5.1.1., paragraph 42).

654. Section 5 of the Handbook for Regulated Financial Services Business states in guidance notes that a relevant person may demonstrate that an obliged person will provide CDD evidence without delay if it requires the obliged person to provide such evidence within 5 working days.

655. The assessment team considers that the measures under Article 16 are broadly adequate to fulfil the requirements under c. 9.2 and the requirement under Article 16(6)(b) of the Money Laundering Order sufficiently addresses the concerns raised by the third round assessment team regarding this criterion. However, the assessment team is of the view that relevant persons should require obliged entities to provide CDD evidence within a shorter period of time than the 5 working day period referred to in the Handbook for Regulated Financial Services Business.

Regulation and supervision of third party (c.9.3)

656. A relevant person may only place reliance on an obliged person if that relevant person knows or has reasonable grounds for believing that the obliged person is a relevant person in respect of whose financial services business the Commission discharges supervisory functions or a person that carries on equivalent business (Article 16(1)).

657. The term ‘equivalent business’ is defined in Article 5 of the Money Laundering Order. A business is equivalent if:

- The other business is carried on in a country or territory other than Jersey;
- If carried on in Jersey, it would be financial services business of that category;
- In that other country or territory, the business may only be carried on by a person registered or otherwise authorised for that purpose under the law of that country or territory;
- The conduct of the business is subject to requirements to forestall and prevent ML and FT that are consistent with those in the FATF Recommendations in respect of that business; and
- The conduct of business is supervised for compliance by an overseas regulatory authority.

658. An overseas regulatory authority is defined in Article 1 of the Money Laundering Order as an authority discharging a function that is the same or similar to a function of the Commission in respect of forestalling and preventing ML and FT.

659. Article 16(3)(b) is intended to ensure that the relevant person is satisfied that the obliged person has measures in place to comply with the CDD requirements set out in R. 5 and R. 10. It requires

a relevant person to obtain adequate assurance in writing from the obliged person that in the course of an established business relationship or one-off transaction:

- the obliged person has applied identification and verification measures;
- has not itself relied upon another party;
- the obliged person has not applied simplified due diligence measures;
- the obliged person is required to keep and does keep evidence of identification, relating to each of the obliged person's customers (and beneficial owners), and a record of such evidence.

660. Additionally, the Handbook for Regulated Financial Services Business (section 5.1.1., paragraph 44) states that a relevant person may demonstrate that it has considered the adequacy of identification measures applied by an obliged person where it takes one or more of the following steps:

- reviews previous experience (if any) with the obliged person, in particular the adequacy and accuracy of information on identity found out by the obliged person and whether that information is current;
- makes specific enquiries, e.g. through the use of a questionnaire or series of questions;
- reviews relevant policies and procedures;
- where the obliged person is a member of a financial group, makes enquiries concerning the extent to which group standards are applied to and assessed by the group's internal audit function.

661. Article 16A of the Money Laundering Order permits a relevant person to rely on a person outside Jersey who is not an obliged person (i.e. carrying on equivalent business), but is a member of the same financial group as the relevant person⁹², to apply similar identification measures to those under the Money Laundering Order that satisfy the relevant FATF Recommendations. Reliance may be placed on such other person if: (1) that other person carries on business which if carried on in Jersey, would be a financial service business (Article 16A(1)(b)); (2) the financial group applies CDD measures and record-keeping requirements in accordance with the Money Laundering Order or equivalent measures (Article 16A(1)(c)); (3) the financial group maintains a ML/FT programme which includes policies and procedures, for the sharing of information between entities within the group for ML/FT purposes (Article 16A(1)(d)); (4) the implementation of the AML/CFT measures by the group are subject to appropriate supervision (Article 16A(1)(e)); and (5) all the conditions set out under Article 16 are complied with (Article 16A(1)(f)).

662. A similar concession had already been in place at the time of the third round evaluation, which the assessment team had found not to be in compliance with c. 9.3 since the group member being relied on was not required to be regulated and supervised in accordance with FATF recommendations. It is to be noted, however, that the approach adopted by Jersey is in line with Recommendation 17 of the 2012 FATF Recommendations, which had already been in force at the time of this assessment.

⁹² Article 16A(2) provides that a person is a member of the same financial group as another person if there is, in relation to the group, a parent company or other legal person that exercises control over every member of that group for the purposes of applying group supervision under –

- a) The core principles for effective banking supervision published by the Basel Committee on Banking Supervision;
- b) The Objectives and Principles of Securities Regulation issued by the International Organisation of Securities Commissions;
- c) The Insurance Supervisory Principles issued by the International Association of Insurance Supervisors.

Adequacy of application of FATF Recommendations (c.9.4)

663. As stated above, an obliged person that carries on equivalent business (i.e. an obliged person situated in a jurisdiction or territory outside Jersey) may be relied on if, among others, the business conducted by that person is subject to requirements to forestall and prevent ML and FT that are consistent with those in the FATF Recommendations in respect of that business. According to section 1.7.1 of the Handbook for Regulated Financial Services Business this condition is satisfied where an obliged person is located in an equivalent country or territory. Appendix B of the Handbook provides a list of countries and territories that are considered by the Commission to have set requirements for measures to be taken by their domestic financial institutions and designated non-financial business and professions to forestall and prevent ML/FT that are consistent with those in the FATF Recommendations. The Handbook clarifies that Appendix B is not intended to provide an exhaustive list of such countries and territories and no conclusions should be drawn from the omission of a particular country or territory from the list. It is therefore up to the relevant person to determine whether a country not included in the list may be considered to be equivalent. For this purpose, the Handbook provides guidance on how to determine the equivalence of a country.

664. In determining whether or not the requirements for measures to be taken in a country or territory are consistent with the FATF Recommendations, section 1.7 of the Handbook for Regulated Financial Services Business explains that the Commission will have regard for the following :

- **Generally** - whether or not the country or jurisdiction is a member of the FATF, a member of a FATF Style Regional Body, a Member State of the EU (including Gibraltar), or a member of the European Economic Area.
- **Specifically** - whether a country or territory is compliant or largely compliant with those FATF Recommendations that are directly relevant to the application of available concessions. These are former Recommendations 5-11, 13-15, 18, 21, 23, and former Special Recommendations IV and VII. Where reliance is placed on an obliged person who is a designated non-financial business or profession, then former Recommendations 12, 16, and 24 will also be relevant.

665. The following sources may be used to determine whether a country or territory is compliant or largely compliant:

- The laws and instruments that set requirements in place in that country or territory;
- Recent independent assessments of the country's or territory's framework to combat ML and FT, such as those conducted by the FATF, FATF Style Regional Bodies, the World Bank and the IMF (and published remediation plans); and
- Other publicly available information concerning the effectiveness of a jurisdiction's framework.

666. The Handbook further states that where a relevant person seeks itself to assess whether a country or territory not listed by the Commission is an equivalent country or territory, the relevant person must conduct an assessment process comparable to that described above, and must be able to demonstrate on request the process undertaken and the basis for its conclusion.

Ultimate responsibility (c.9.5)

667. Article 16(10) of the Money Laundering Order provides that a relevant person will remain liable for any failure of the obliged person to apply identification measures.

Effectiveness and efficiency

668. Many financial institutions interviewed on-site appeared to be aware of the reliance requirements set out in the Money Laundering Order and some banks informed the assessment team that they had terminated relationships with obliged persons for failing to provide the required documentation. A review of the policies and procedures provided by some financial institutions to the assessment team, indicated that the requirements under Article 16 of the Money Laundering Order are adequately taken into consideration. However, a number of issues were noted, which in the view of the evaluation team may have a negative impact on the effectiveness of Recommendation 9.
669. The vast majority of customers of financial institutions in Jersey are non-resident. In relation to these customers, financial institutions either perform CDD themselves or rely for approximately 12% of the customers (no data on value of portfolio available) on obliged persons for the performance of CDD measures. Obligated persons are generally other financial institutions, TCSPs, lawyers or accountants situated in and outside Jersey. A specific feature of the Jersey regulatory system is that Jersey-based TCSPs are qualified and regulated as financial institutions.
670. During the on-site visit, financial institutions stated that the majority of non-resident customers were introduced via Jersey-regulated TCSPs or TCSPs similarly regulated in Guernsey, the Isle of Man or Gibraltar. Other customers were introduced by TCSPs based in the United Kingdom. It appears that financial institutions consider obliged persons based in the United Kingdom as posing the same level of risk posed by obliged persons in Jersey, Guernsey, Isle of Man and Gibraltar. In the UK TCSPs are not qualified and regulated as financial institutions. Fewer customers appeared to be introduced by obliged persons from other countries.
671. When placing reliance, many financial institutions met on-site appeared to focus their assessment of risk mainly on the type of customer or product involved in the business relationship rather than the regulatory risks related to the countries in which obliged persons are situated. Many of the jurisdictions in which obliged persons being relied on by Jersey financial institutions are situated received a partially compliant (or lower) rating for Recommendations 12, 16 and 24 in their last (FATF or IMF) assessment. The application of CDD measures by and the supervision of the obliged persons on which Jersey financial institutions rely may therefore not be sufficiently effective. This, in turn, may have a negative impact on the extent to which Jersey financial institutions receive adequate CDD information from these obliged persons. Almost none of the financial institutions met on-site indicated that consideration was given to the results of IMF and FATF AML/CFT assessments as part of the assessment of the risk posed by an obliged person. The Jersey authorities do not have information available on the origin of customers serviced by financial institutions. The Jersey financial institutions did collect information on the origin of obliged persons though. 59% of those are situated in Jersey, Guernsey or the Isle of Man. 40% is based in what Jersey considers to be equivalent countries and territories that have set requirements for their DNFBPs that are consistent with FATF recommendations. As argued before many of those countries in fact have low ratings for those recommendations that concern CDD measures and supervision of it for their DNFBPs. TCSPs in those countries are in general qualified and supervised as DNFBP. The remaining 1% of the obliged persons originate from other countries worldwide. No information is available on the value of their portfolio.
672. As noted under Recommendation 5 and 12, the application of CDD measures by certain financial institutions and DNFBPs in Jersey, which are being relied on by other financial institutions in Jersey, is not always effective. In particular, issues were noted in relation to the identification of beneficial owners. This impacts negatively on the effective application of Recommendation 9.
673. During interviews on-site it emerged that, even where reliance provisions were not formally applied, some financial institutions used foreign TCSPs, lawyers, accountants to collect information required for CDD purposes on their behalf. In practice, the financial institution would receive the CDD file on a non-resident customer complete with information and documentation

collected by a third person outside Jersey. Once the business relationship is established, the financial institution would either physically meet with the customer or establish contact remotely by email or telephone. No additional checks appeared to be carried out in all cases by the financial institution on the information and documentation received from the third person and therefore what the exact difference was between placing reliance and not placing reliance. One financial institution suggested that this practice was rather common and needed to be addressed further by the authorities to clarify the requirements applicable in these circumstances.

674. The same goes for the earlier described element of purpose and intended nature for which no reliance can be placed according to the regulations. In several cases our interlocutors told us that they use the information channels of the obliged persons to collect the information on purpose and intended nature. It was not always clear for the assessors what the additional checks of the relevant persons were in this case and therefore what the exact difference was between placing reliance and not placing reliance.
675. Financial institutions are not permitted to place reliance on a chain of intermediaries i.e. financial institutions may only rely on an obliged person which has obtained CDD information itself. This was confirmed by the financial institutions met on-site. This notwithstanding, many financial institutions explained that where formal reliance was not placed on an obliged person, CDD information and documentation would be obtained through a chain of intermediaries rather than from the customer directly. The combination of the before described elements of less awareness of risks related to the regulatory situation of introducers (TCSPs, lawyers, accountants), the lack of clarity on additional work in situations where files are presented (formally non reliance situations) and such a chain of intermediaries would present a high risk.
676. Additional guidance from the Commission would be beneficial for the above described situations to raise awareness, strengthen effective implementation and support a level playing field.
677. As described under Recommendation 5 (and 23), four exemptions feature a situation where the argumentation of the Jersey authorities is that exemption of CDD is allowed while in absence of such an exemption the same CDD would be expected to be carried out. For those situations the FATF developed Recommendation 9 to facilitate this and avoid unnecessary work. The agreed model used here is placing reliance on third parties and to a certain extent intra group reliance. By using those exemptions effective reliance is placed upon other third parties, but without following the guidelines that were developed for these instances in the Handbook for Regulated Financial Services Business. This is an effectiveness concern in the context of R5 (and 9) while those situations are practically not covered.

3.2.2 Recommendations and comments

678. Since the last evaluation, the authorities have addressed the technical deficiencies identified in the last report⁹³. The evaluation team could not verify to the fullest extent possible whether the third bullet point in the previous report had been addressed since Recommendation 24, which was rated LC in the third round report, is not being assessed in this report. However, as noted under Recommendation 12, issues were identified in relation to the identification of beneficial owners by Jersey lawyers and TCSPs, who are relied on by financial institutions. Therefore, this deficiency does not appear to have been fully addressed yet.
679. In light of the effectiveness concerns identified by the assessment team, the authorities should:

⁹³ Except for the deficiency relating to the concession permitting reliance, as intermediary or introducer, on a branch or subsidiary group member not regulated and supervised in accordance with FATF recommendations (c. 9.3), which is now permitted under Recommendation 17 of the 2012 FATF Recommendations.

- Amend the Handbook for Regulated Financial Services Business to require relevant persons to obtain CDD evidence from obliged persons within at least 2 working days;
- Clarify in guidance whether financial institutions may obtain CDD information and documentation from third parties without applying the reliance provisions;
- Clarify the requirement for financial institutions to take into consideration FATF/IMF assessments when assessing the risk posed by the country in which the obliged person is situated and monitor this issue in more depth.

680. The combination of the before described elements of less awareness of risks related to the regulatory situation of introducers (TCSPs, lawyers, accountants), the lack of clarity on additional work in situations where files are presented (formally non reliance situations) and such a chain of intermediaries would present a high risk. Additional guidance from the Commission would be beneficial for the above described situations to raise awareness, strengthen effective implementation and support a level playing field.

681. Four exemptions as currently used are basically situations where reliance is placed on third parties, but without following the guidelines as described in the Handbook for Regulated Financial Services Business for placing reliance. This leads to less assurance. The recommendation is therefore to remove the exemption and allow financial institutions which are currently exempt in those situations from conducting CDD measures to apply the reliance provisions under Article 16 of the Money Laundering Order or seek other solutions.

3.2.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	PC	<p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Where the controlling element concerning the identification of BO is limited by certain Jersey financial institutions that are placing reliance on other financial institutions, this has a negative impact on the effective application of Recommendation 9; • The risks posed by Appendix B⁹⁴ listed jurisdictions, where the obliged person is situated, is not always taken into consideration before placing reliance; • The collection of CDD information and documentation through third parties (especially through a chain of third parties) without applying the formal reliance requirements raises concerns.

⁹⁴ Appendix B of the AML/CFT Handbooks provides for a non-exhaustive list of countries and territories that are considered to be “equivalent jurisdictions” and that the Commission considers to have set requirements that are consistent with those in the FATF Recommendations - for the purposes of applying simplified identification measures under Articles 17 and 18 and for placing reliance on third parties under Article 16. The list in place at the time of the evaluation visit included:

-FATF Members: Australia, Japan, Austria, Luxembourg, Belgium Netherlands (excluding Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten), Canada, New Zealand, Denmark, Norway, Finland, Portugal, France, Singapore, Germany, South Africa, Greece, Spain, Hong Kong, Sweden, Iceland, Switzerland, Ireland, United Kingdom, Italy, United States:

-EU/EEA Members (which are not also FATF members): Bulgaria, Lithuania, Cyprus, Malta, Czech Republic, Poland, Estonia, Romania, Hungary, Slovakia, Latvia, Slovenia, Liechtenstein, Gibraltar (through the UK)

-Crown Dependencies and overseas territories: Guernsey, Isle of Man, Cayman Islands.

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

Recommendation 4 (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

682. Compliance with Recommendation 4 was previously rated LC. The summary of factors underlying the rating indicated that there was no comprehensive exclusion from common law duty of client confidentiality to permit financial institutions to exchange information for purposes of R.7 and R.9 (other than with relevant persons or within a group) and recommended that it should be explicitly provided that financial institutions do not breach confidentiality duty in exchanging customer information between themselves for AML/CFT purposes.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

683. There is no general secrecy or confidentiality statute in Jersey that would inhibit the implementation of the FATF Recommendations. However, there is a strict application of the common law precedent in respect of customer information, which is subject to exceptions for specified purposes.

684. These exceptions, which have been clarified in *Tournier .v. National Provincial and Union Bank of England (1924)*, arise where: the disclosure is required by statute (such as the Drug Trafficking Offences Jersey Law 1988, the Proceeds of Crime Law, the Investigation of Fraud Law, the Criminal Justice (International Co-operation) Law, Terrorism Law, the Police Procedures and Criminal Evidence (Jersey) Law 2003); there is a duty to the public to disclose (i.e. potential danger to the state or public duty); disclosure is in the financial institution's interest; or disclosure is permitted with the customer's consent, the latter being either expressed or implied.

685. With regard to access by supervisory authorities to confidential information held by financial institutions and other relevant persons, the relevant provisions are contained in the SBL, the Commission Law and the regulatory laws.

686. Article 8 of the SBL gives the JFSC or its duly authorized agent broad powers to enter the supervised person's premises, to examine the supervised person and to require the supervised person to supply information and answer questions.

687. No deficiencies have been identified by the assessors in relation to the abilities of the law enforcement and FIU authorities to access information they require to properly perform their functions in combating ML/TF. As noted under R.26, although before the enactment of the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 2015 in March 2015, the legal framework did not enable the FIU to request additional information from reporting parties other than from those that had submitted a SAR, in practice such information was provided upon request. As of 11th March 2015, the FIU has the power to request additional information from any relevant person.

688. Otherwise, as part of an investigation of ML or FT and for the purpose of collection of evidence, further information is obtainable by the JFCU by means of application to the Bailiff (the Island's chief judge) for:

- A production order - Article 40 of the Proceeds of Crime Law and Article 31 of and paragraph 4 of Schedule 5 to the Terrorism Law.
- A financial information order - Article 41A of and Part 1 of Schedule 3 to the Proceeds of Crime Law and Article 32 of and Schedule 6 to the Terrorism Law.

- An account monitoring order - Article 41A of and Part 2 of Schedule 3 to the Proceeds of Crime Law and Article 33 of and Schedule 7 to the Terrorism Law.

Sharing of information between competent authorities, either domestically or internationally

689. On June 23rd 2014 the JFSC and the JFCU signed an MOU in order to establish a formal basis for co-operation between both authorities, particularly in respect of the exchange of information to assist both parties in carrying out their respective functions. This MOU provides that all relevant information exchanged between the parties will be for intelligence purposes only; if the information needs to be used as evidence or for use in an investigation then the appropriate formal application is required. This MOU signed between the parties has no confidentiality impediments while exchanging due information.

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

691. Article 36 of the SBL permits disclosure of information held in a certain number of cases. Assessors are of the opinion that none of these disclosures are an impediment from a confidentiality point of view.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

Recommendation 7

692. Sharing of information where required by R. 7 is implemented in the legislation under Article 19(7) of the Money Laundering Order, which states that a respondent may make available to a correspondent bank, at that bank's request, a copy of the evidence, documents, data and information related to CDD information.

693. Sharing of information where required by R.9, as implemented under Article 19(5) of the Money Laundering Order, does not raise any particular issues. Article 19 of the Money Laundering Order specifies the records to be kept by a relevant person, and in cases where an assurance has been provided in accordance with Article 16 (or equivalent provision in place outside Jersey) to another relevant person, the obliged person is required to make available to that other relevant person, at its request, the evidence that the obliged person has obtained applying identification measures under Article 13 (or equivalent provisions in place outside Jersey). A similar provision in Article 19(6) allows (but does not require) a relevant person to provide evidence to a person that is not a relevant person.

SR VII

694. The general rule is, in line with Regulation 6(1) of the Wire Transfer Regulations, that a payment service provider must ensure that transfers of funds are accompanied by complete information on the payer.

695. If the payment service provider is situated in Jersey and the payment service provider of the payee is situated in Jersey, the other Crown Dependencies or the UK, information regarding the payer's account number or a unique identifier allowing the transaction to be traced back to the payer will be sufficient.

696. However, if the payment service provider of the payee so requests, the payment service provider of the payer shall, within 3 working days, make the complete information on the payer available to the payment service provider of the payee.

Sharing of information with domestic or international financial institutions

697. Article 22(A) of the Money Laundering Order allows financial institutions to disclose information to another part of its group or network, where it is appropriate to do so for the purpose of preventing and detecting ML or FT. The information to be shared can be:

- information contained in any internal or external suspicious activity report (SAR);
- any additional information that may be requested from the JFCU about that SAR;
- records on transactions, identification data, accounts files and business correspondence.

Effectiveness and efficiency

698. Financial institutions did not report any concerns regarding secrecy or confidentiality rules. Almost all parties met, pointed out that whenever the Commission or any other competent authority demands information, this is provided with no impediments.

699. Nevertheless two FIs met stated that when the JFCU or the Commission requires information, this is not provided without the prior legal advice of their internal legal department. When the correspondent department confirms that the information required can be disseminated and is not against the common law duty of confidentiality, they satisfy the requirement of the authorities.

700. Jersey authorities confirmed that there have been no cases at all where information requested has not been provided to the competent authorities. Financial institutions have the right to consult their legal department for any relevant issue, but that never resulted in an impediment for the dissemination of the information.

701. In regards to the sharing of information between financial institutions where this is required by R.7, R.9 and SRVII, this seems to be correctly implemented.

3.3.2 Recommendations and comments

702. The previously identified deficiency has been addressed and no issues came to the assessors' attention whereby the effective implementation of the FATF Recommendation 4 might have been restricted or affected. The requirements of Recommendation 4 are thus considered to be met.

3.3.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	

3.4 Record keeping (R.10)

3.4.1 Description and analysis

Recommendation 10 (rated C in the IMF report)

Summary of 2009 factors underlying the rating

703. Previously, Jersey was rated Compliant in respect of Recommendation 10. No comments nor recommendations were hence formulated.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

C.10.1

704. According to Article 19(2)(b) and Article 20(3) of the Money Laundering Order, a relevant person must keep a record containing details relating to each transaction carried out in the course

of any business relationship or one-off transaction for a period of five years commencing with the date on which the transaction is completed.

705. Under Article 20(5) of the Money Laundering Order, the Commission may notify to the relevant person a record retention period longer than five years, and such longer period shall apply instead of five years. This requirement may be applied regardless of whether the business relationship is ongoing or has been terminated.
706. Additionally, Regulation 6(5) of the Wire Transfer Regulations requires the payment service provider of the payer to keep for 5 years a record of complete information on the payer. Regulation 12 of the Wire Transfer Regulations requires the payment service provider of the payee to keep for five years records of any information received on the payer.

C.10.1.1

707. Article 19(3) of the Money Laundering Order requires records of transactions that are kept to be sufficient to enable the reconstruction of individual transactions. Although there is no explicit mention that the transactions should be kept in a way so as to provide, if necessary, evidence for prosecution of criminal activity, the assessment team considered that this requirement is implicitly covered by the Money Laundering Order. Furthermore, Jersey authorities believed that the express introduction of this provision would limit the current scope of Article 19(3) of the Money Laundering Order.
708. Pursuant to section 10.3 of the Handbook for Regulated Financial Services Business, records must contain the following details: name and address of the customer, kind of currency and the amount, details of the account, date of the transaction, details of the counterparty, nature and details of the transaction.

Record keeping of identification data, files and correspondence (c.10.2)

709. Measures for record keeping of identification data are set out under Article 19(2)(a), Article 20(1) and (2) of the Money Laundering Order. According to these provisions, a relevant person must keep a record comprising:
- A copy of the evidence of identity obtained pursuant to the application of CDD or information that enables a copy of such evidence to be obtained for a period of at least 5 years commencing with the date on which the business relationship ends or one-off transaction is completed; and
 - All the supporting documents, data or information obtained in respect of a business relationship or one-off transaction, for a period of at least five years commencing with the date on which the business relationship ends or one-off transactions is completed.
710. Additionally, section 10 of the Handbook for Regulated Financial Services Business also requires that all documents related to risk assessments, SARs, corporate governance and information regarding screening, awareness and training of employees must also be kept for a period of 5 years.
711. Although in general terms the Money Laundering Order obliges to keep “all supporting documents”, there is no express requirement of keeping “account files and business correspondence” for a minimum period of 5 years in the Law. The Handbook for Regulated Financial Services Business in paragraph 6 of its section 10.2 titled “overview” makes reference to them and paragraph 11 of section 10 states that a relevant person may demonstrate that it keeps all supporting documents, data and information in respect of a business relationship or one-off transaction where it keeps accounts files and business correspondence.
712. Finally, it should be stated that the Taxation (Accounting Records) (Jersey) Regulations 2013 also covers record keeping provisions, and keeping business correspondence is explicitly included.

713. The Money Laundering Order, under its Article 20(5), provides that the Commission may notify to the relevant person a record retention period longer than five years, and such longer period shall apply instead of five years. According to the authorities, this provision has never been used in practice.

Availability of Records to competent authorities in a timely manner (c.10.3)

714. Article 19(4) of the Money Laundering Order requires a relevant person to keep records in such a manner that those records can be made available on a timely basis to the Commission or to the Financial Intelligence Unit (to assist with the analysis of a SAR or for the purposes of an investigation) for the purposes of complying with a requirement under any enactment.

715. According to the Handbook for Regulated Financial Services Business and unless otherwise specified, records relating to evidence of identity, other CDD measures, and transactions must be accessible and retrievable within 5 working days (whether kept in Jersey or outside Jersey), or such longer period as agreed with the Commission. Other records must be accessible and retrievable within 10 working days (whether kept in Jersey or outside Jersey), or such longer period as agreed with the JFSC.

Effectiveness and efficiency

716. From the meeting with the private sector during the on-site mission, the assessment team concluded that all financial institutions are familiar with their obligation for record keeping requirements. Some FIs stated that all documents are stored for 10 years according to their group policies, and although there is no explicit obligation under Jersey legislation, some correspondence documents are kept for at least 5 years.

717. The storage of all necessary information is undertaken in paper and/or computerised form and is available to competent authorities in a timely manner. The supervisory authority has demonstrated that it regularly assesses compliance with the record keeping required. They assured that documents are kept in a way that permits reconstruction of transactions and no infringements have been detected till date.

3.4.2 Recommendation and comments

718. The requirements of Recommendation 10 are considered to be met.

3.4.3 Compliance with Recommendation 10

	Rating	Summary of factors underlying rating
R.10	C	

3.5 Suspicious transaction reports and other reporting (R. 13, 14 and SR.IV)

3.5.1 Description and analysis

Recommendation 13 (rated LC in the IMF report) & Special Recommendation IV (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

719. The IMF report was satisfied that the suspicious activity reporting regime, set out in the three laws (Proceeds of Crime Law, the Drug Trafficking Offences Law, and the Terrorism Law) largely complied with the requirements of R.13 and SR.IV. One factor underlined the Largely

Compliant rating for both recommendations, namely that there appeared to be scope to improve the timeliness of the SAR reporting in order to enhance effectiveness.

Requirement to Make STRs on ML to FIU (c.13.1)

720. Requirements to report suspicion of ML and FT are provided for in Articles 34A and 34D of the Proceeds of Crime Law, and Articles 19 and 21 of the Terrorism Law both as amended by the Proceeds of Crime and Terrorism Law.
721. Each contains a direct reporting obligation in respect of any person in a trade, profession, or employment, and additional obligations apply to a relevant person. In the case of a relevant person, the report must be made to a Police or Customs officer or to a MLRO or other designated officer in line with procedures established by an employer. The Proceeds of Crime Law and the Terrorism Law were amended by the Proceeds of Crime and Terrorism Law in order to put beyond doubt the status of the direct reporting obligation. Section 8 of the AML/CFT Handbooks also addresses reporting.
722. Under Article 21 of the Money Laundering Order, which covers reporting procedures and related disclosure requirements, a relevant person is obliged to maintain procedures for staff to report where there is knowledge or suspicion or there are reasonable grounds for knowing or suspecting that another person is involved in ML, and failure to maintain such procedures constitutes an offence.
723. In the case of an employee of a relevant person, that person also commits an offence if he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person: a) is engaged in ML; or b) has committed an offence under Articles 15 or 16 of the Terrorism Law, and does not report that information or other matter to a Police or Customs officer, or to a MLRO or other designated officer in line with procedures established by his employer (which must be in line with Article 21 of the Money Laundering Order).
724. Where a report is made to a MLRO or other designated officer, Article 21(1)(h) of the Money Laundering Order provides for policies and procedures to require the information or other matter contained in a report to be disclosed to the FIU, where the MLRO or other designated officer who has considered the report knows or has reasonable grounds for suspecting that another person is engaged in ML or FT.
725. The obligation to make a report under the Terrorism Law covers terrorism, including FT. The obligation to make a report under the Proceeds of Crime Law applies in respect of money laundering (including drug related money laundering) and where property constitutes or represents the proceeds of any offence in Jersey or elsewhere for which a person is liable on conviction to imprisonment for a term of one or more years.
726. Section 2.4 of the AML/CFT Handbooks refers to a requirement for systems and controls to enable a relevant person to report to the JFCU when the person knows, suspects or has reasonable grounds to know or suspect that another person is involved in ML or FT, including attempted transactions.

Requirement to Make STRs on FT to FIU (c.13.2 & IV.1)

727. The obligation to make a report applies to a relevant person where he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person has committed an offence under any of Articles 15 and 16 of the Terrorism Law as amended by the Proceeds of Crime and Terrorism Law.

No Reporting Threshold for STRs (c. 13.3, c. SR.IV.2)

728. All suspicious activity, including attempted transactions, must be reported under Articles 34A and 34D of the Proceeds of Crime Law, and Articles 19 and 21 of the Terrorism Law both as amended by the Proceeds of Crime and Terrorism Law. This is on the basis that, for relevant persons, the reporting threshold is knowing or suspecting, or having reasonable grounds for suspecting, that another person is engaged in ML or has committed an offence under either Articles 15 or 16 of the Terrorism Law and there is no need for there to be any transaction.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

729. All suspicious activity, including those that involve tax, must be reported under Articles 34A and 34D of the Proceeds of Crime Law, and Articles 19 and 21 of the Terrorism Law both as amended by the Proceeds of Crime and Terrorism Law. Section 2.8.4 of Part 2 of the AML/CFT Handbooks says that fraud, including fiscal offences (such as tax evasion) and exchange control violations are predicate crimes for ML in Jersey.

Additional Elements – Reporting of All Criminal Acts (c.13.5)

730. Reporting entities in Jersey disclose all suspicions related to potential criminal activities to the FIU. Jersey has set up a Liaison Notice system. During investigation of serious crimes, the Police release Liaison Notices when a person has been charged and where the information about crime and suspect is shared with reporting entities and they will disclose SARs about those persons if they are detected to be customers. Although it was mentioned that in circumstances where there is no crime and victims then in those cases report is made directly to the Police (for example “419 scam letter” cases).

Statistics

731. The number of SARs received shows a steady increase over the last years.

Received SARs:

	2010	2011	2012	2013	2014
	1746	1848	1751	2030	2287

Received SARs (TF)

	2010	2011	2012	2013	2014
	4	10	14	11	20

732. The FIU does not collect information on attempted transactions as Jersey operates a suspicious activity reporting and not a suspicious transaction reporting regime.

733. The FIU does collect information on suspicious activity disclosed by reporting entities which was detected and reported before the activity proposed by the customer was completed. All of these SARs resulted in a business relationship being declined, as shown by the table below:

Year	2008	2009	2010	2011	2012	2013	2014
Business declined Letter	58	76	74	74	85	93	89
Total number of SARs received	1407	1853	1746	1848	1751	2030	2287

Effectiveness and efficiency R.13 and SR. IV

734. Reporting entities in Jersey disclose suspicions related to ML and TF to the FIU. Reports of financial crime more generally may also be received by the FIU by virtue of the relationship with

the financial services industry. Such reports are referred to the appropriate States of Jersey Police Department. Reports of financial crime, other criminal acts and scams are also received directly by the States of Jersey Police.

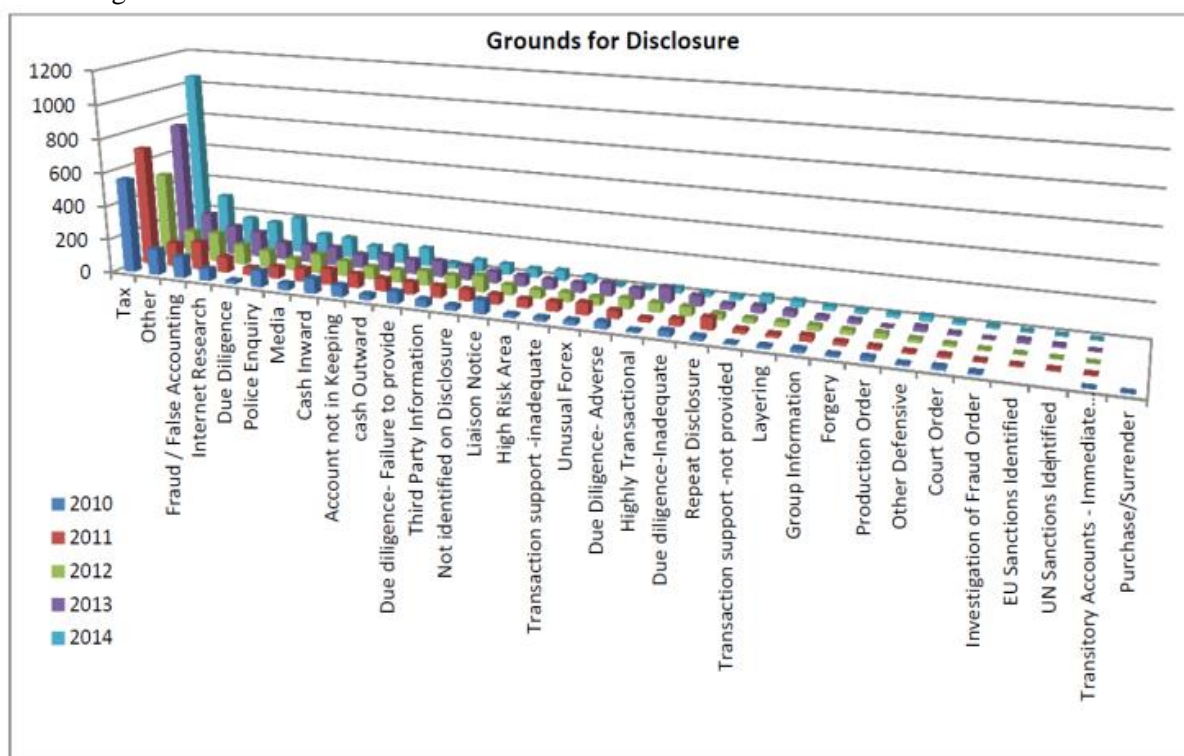
735. The FIU operates a ‘liaison notice’ system in support of investigations. When a subject has been charged with a drugs trafficking offence, or serious crime with a financial element, a notice may be shared with reporting entities across the jurisdiction providing details of the defendant and offence.
736. This system is supplementary to standard investigative actions, and seeks to identify any accounts or assets not previously disclosed during the investigation or known to investigators. Should institutions establish any current or historic connection, intelligence is submitted by means of SAR.
737. Upon receipt of a SAR, an initial assessment is conducted. Factors under consideration include whether an active criminal investigation is underway, if the SAR is terrorist related, or whether there is prevention of crime, PEP or life at risk issues. The strength of intelligence and risk of dissipation of assets is considered.
738. Where supported by the intelligence, an FIU “no consent” is applied under the provision of Article 32 Proceeds of Crime Law (Article 18 of the Terrorism Law), upon the authority of the Head of the FIU. Application of “no consent” effectively prohibits operation of the account, preventing the institution from doing any act without the consent of the FIU.
739. An FIU “no consent” is generally, but not always, applied prior to the commencement of an investigation in order to prevent dissipation of assets, allowing liaison with overseas counterparts and further development of intelligence. The instances where “no consent” is not applied immediately are where there are operational reasons for delaying so, such as the risk of alerting suspect(s). In those cases, the FIU works in close cooperation with foreign FIUs, and directly with overseas Law Enforcement and Law Officers, and the account freeze is then co-ordinated and applied in accordance with operational requirements.
740. The FIU now receives over 90% of the reports online, which has improved the timeliness of SAR submissions. The authorities have also taken additional measures to improve the timeliness of SAR reporting, in the context of on-site and offsite supervision as well as outreach to relevant sectors. A self-assessment questionnaire used for the supervision of persons carrying on investment business and funds service business includes questions aimed at forming the basis of a review of the timeliness of reporting. SAR reporting practices have also been considered in the context of a series of AML thematic examinations of deposit-takers and there have been cases where the JFSC’s findings have identified timeliness issues and corrective action has been required.
741. The AML/CFT Handbooks now provide for the board to consider timeliness of reporting (2.4.1), the MLRO to consider the timeliness of internal reporting (8.3.1) and the board to set a period of time in which it typically expects a SAR to be processed (8.3.2). This will enable in the future the authorities to be in a position to collect related statistics.
742. Reporting is considered on all visits that cover AML/CFT. In the years 2008-14, approximately 250 onsite examination findings relating to SAR processes and procedures generally were identified. This included findings in areas such as having inadequate procedures, delay in externalising SARs, no deputy MLRO, lack of a SAR register and a low level of internal SARs. Specifically in 2013/14, there were 10 findings relating to the timeliness of reporting. The Commission indicated that the vast majority of SARs are made “as soon as is practicable”. Whilst the Commission has not published specific guidance on what period of time would be considered acceptable, past examination findings show that the Commission has found relevant persons to have been in breach of the requirement to file “as soon as is practicable” where internal SARs had yet to be reported to the JFCU after seven working days. The supervision does not consider

quality of reporting specifically, though the Commission has been made aware of a few examples of poor quality reports (through the JFCU).

743. Responses to SARs are, in the majority, issued by the FIU within 24 to 48 hours with the contact name and number of the officer who will be dealing with the report, together with the name of the supervisory officer who has made an initial assessment. It is considered that in an environment such as Jersey, there is the benefit of reporting persons being able to readily establish one-to-one contact with specific officers within the JFCU for advice and guidance.

744. The vast majority of SARs relate to subjects, entities and activity overseas. The statistics provided show that the overall level of reporting has remained relatively constant over the last years, with the exception of 2014, when reporting appears to have increased in the context of tax-related legislative changes elsewhere. Reports filed by banks continue to represent about 65-70% of all SARs received by the FIU. Trust and Company Service Providers are the second largest reporting source. Reports have also been received consistently from other reporting entities in the financial sector.

745. Tax remains invariably the first top ground for disclosure, followed by suspicions of fraud/false accounting.



746. Tax SARs are often submitted in circumstances where the institution is not aware of overt criminality or the existence of any active criminal investigation. The suspicion may develop as a result of information, or the lack of information, that would otherwise provide comfort that appropriate tax advice and planning is in place in respect of the assets in question. Four scenarios reflect the majority of tax-related SARs:

- Historical domestic offshore account holders
- Domestic tax amnesties and extra-territorial tax legislation
- Suspicion arising from institutional review procedures not directly related to tax

- High profile or specialist tax-avoidance schemes and products generating suspicion due to media coverage, other notification or court action

747. The assessors consider that while this is understandable relevant feedback should be given to reporting entities in order to ensure that adequate focus is also provided to SARs related to ML and predicate crimes. Due diligence related grounds, notice from law enforcement or court as well as cash movements amount also to approx. 10-12% of the grounds for disclosures.
748. Several SARs relating to terrorist financing suspicions have also been received (2009: 12, 2010: 4; 2011: 10; 2012:14; 2013: 11; 2014: 20). As the figures show, the number of FT related SARs has been increasing, though the overall number of FT reports is low. The main reasons for filing FT related SARs are mainly name-matches of sanction lists and in some cases, media related information. Discussions with the private sector have revealed that the focus of FT reporting is primarily understood as relating to the sanctions list.
749. As noted under R.26, the FIU's analytical capacity and the exploitability of information received is dependent on the quality of reports submitted by the reporting entities. The JFCU has published information highlighting quality issues (e.g. lack of detailed and correct personal data) was published on its website during 2014 in order to ensure standards were maintained and enhanced.
750. Before 11th March 2015, the FIU's practice was to informally request financial information from reporting entities when there was no SAR filed by them in respect of such persons. Such informal requests triggered SARs in appropriate situations. The assessment team welcomed the decision of the authorities to formally empower the JFCU to request information from persons who haven't filed a SAR in the first place, but who could have relevant information in their possession.
751. A notable role in reporting is related to the liaison notice system in place in Jersey. If a person is charged for serious crime where also potential financial aspects could be involved, then a liaison notice is generated and shared with reporting entities which leads to SARs being submitted to the FIU by those entities which have any relationship with the subject(s) of the liaison notices.
752. Meetings with representatives of some industry representatives revealed that a large proportion of their SARs were triggered by the fact that, as a result of suspicion, the reporting entity no longer feels comfortable with the business relationship and seeks confirmation to exit from it.
753. It was also noted that the majority of reporting entities met by the assessment team appeared to devote specific attention to reporting levels of their respective sector in foreign comparable jurisdictions, with a concern for remaining within broadly similar reporting levels.
754. While acknowledging the FIU's constructive and helpful approach in assisting reporting entities in the implementation of their reporting obligations, which has also been positively confirmed by reporting entities' representatives, the evaluation team is of the view that there is clearly a need for more outreach, in order to clarify issues related to the quality of SARs, reports aimed to exit relationship and in respect of the FT reporting obligation.
755. The table below outlines the indictments and ML convictions which arose from the overall SARs system. The assessment team considered these results to be encouraging, particularly when taking into account the previous assessment's results. This conclusion has taken into account the fact that the majority of disclosures relate to foreign predicate activity, hence rendering the FIU dependent on the assistance received from its counterparts abroad. This should also be put into perspective with the positive analysis of frequent disseminations of intelligence by the FIU to overseas FIUs.

	FIU Cases in the reference year	Related judicial proceedings in reference year – Number of cases	Related judicial proceedings in reference year – number of persons
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	Under Investigation at year end	Completed in reference year	Prosecution (based on FIU disseminated cases)			Convictions (final)			Prosecution (based on FIU disseminated cases)			Convictions (final)		
			ML	FT	Other criminal offences	ML	FT	Other criminal offences	ML	FT	Other criminal offences	ML	FT	Other criminal offences
2008	11		1 ⁹⁵			1			2			2		
2009	17	2	-	-	-									
2010	9	9	2 ⁹⁶		0	2			2			2		
2011	13	2			2 ⁹⁷			2			2			2
2012	18	6			2 ⁹⁸			2			5			5
2013	18	8	2 ⁹⁹			2			4			4		
2014	16	10												

756. The consent regime also plays an important part in fighting crime and recovering its proceeds. As a result of several SARs, the FIU has issued non-consents which have the effect of suspending transactions and blocking accounts, followed by investigations, indictments and ultimately convictions and confiscations. The table below shows the amounts confiscated as a result of the consent regime.

Year	Number of non-consents issued by FIU to suspend transactions/block accounts	Number of cases where the FIU non-consent was followed by a preliminary investigation and a saisie judiciaire was issued by the Court ¹⁰⁰	Number of cases where the FIU non-consent was followed by a preliminary investigation and a freezing order was issued	Number of cases where a prosecution /indictment was initiated	Convictions and confiscation	
					Cases	Amount (in EUR)
2008	15 individuals/6 cases	1	N/A	0	0	0
2009	18 individuals/10 cases	3	N/A	0	0	0
2010	25 individuals/18 cases	1	N/A	0	0	0
2011	28 individuals/19 cases	2	N/A	2	2	29,431.09
2012	40 individuals/17 cases	2 ¹⁰¹	N/A	3	3	0
2013	52 individuals/18 cases	1	N/A	1	1	150,687.73
2014	25 individuals/16 cases	0	N/A	0	0	0

Recommendation 14 (rated PC in the IMF round report)

Summary of 2009 factors underlying the rating

757. Recommendation 14 was rated Partially Compliant for the following reasons:

- The protection for SAR reporting was not limited to good faith reporting
- Tipping off provision was not fully consistent with international standard in being limited to situations that might prejudice an investigation.

Protection for making STRs (c. 14.1)

⁹⁵ Aguiar and Soares

⁹⁶ Bhojwani, P.Michel

⁹⁷ Inclusive of all investigations initiated in given year or ongoing. AG v Smith (Fraudulent Conversion) AG v J.Michel (Attempting to Pervert the Course of Justice)

⁹⁸ AG v Cameron, Lewis, Foot and Christmas (Fraudulent Inducement to Invest); AG v Huchet (Fraudulent Conversion)

⁹⁹ AG v McFeat, Smyth and Howard, AG v Ellis

¹⁰⁰ Figures are in respect of the year in which the non-consent was originally issued

¹⁰¹ Non-consent made in respect of Liam Norris regarding predicate offence of drug trafficking: money laundering convictions in 2013 for McFeat, Smyth, Howard and Ellis connected to Norris' original predicate offence

758. Where a SAR is submitted under the Proceeds of Crime Law, Articles 32(2)(a), 34A(3), and 34D(9) state that disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
759. Where a SAR is submitted under the Terrorism Law, Articles 20(4) and 22(1) state that disclosure shall not be treated as a breach of any restriction on the disclosure of information.
760. In both cases and when disclosure of information has been done in good faith (for example Article 18 of the Terrorism Law), this protection applies even if the relevant person does not know what precise underlying criminal activity is, regardless of whether illegal activity has actually occurred.

Prohibition against tipping off (c.14.2)

761. Article 35 of the Proceeds of Crime Law and Article 35 of the Terrorism Law, provide that a person is guilty of a “tipping-off” offence if a person knows or suspects that a SAR has been or will be made to the designated officer or JFCU, and that person discloses to any person the fact that such a SAR has been or will be made, or any other related information.
762. The Proceeds of Crime and Terrorism Law amended the tipping-off offences in Article 35 of the Proceeds of Crime Law and Article 35 of the Terrorism Law and removed the previous reference to “likely to prejudice an investigation” as recommended by the IMF in the previous assessment.
763. Disclosure is possible only in the cases of Article 35(6) and 35(8) of the Proceeds of Crime Law and where permitted by the Tipping-Off Exceptions Regulations, which permits disclosure for the purpose of preventing and detecting ML/FT in certain circumstances such as internally within a relevant person, within a financial group and to supervisory bodies.
764. The JFCU shares the actual SAR with the JFSC. Supplementary material accompanying the SAR is not provided.
765. Information is provided subject to confidentiality caveats regarding use, security and confidentiality. It is supplied via a secure, encrypted electronic gateway.
766. The Commission commits an offence under:
- Article 34 of the Proceeds of Crime Law if it disseminates the content of a SAR without the express authorisation of the AG.
 - Tipping Off Exceptions Regulations where it disseminates the content of a SAR without the express authorisation of the JFCU.
767. The FIU does not share case files with the JFSC. Should it be necessary to share information arising from international co-operation, the specific written authorisation of the relevant jurisdiction would be sought.

Additional element – Confidentiality of reporting staff (c.14.3)

768. Article 33 of the Proceeds of Crime Law and Article 23 of the Terrorism Law, provide that information disclosed in a SAR shall not be disclosed unless there is a gateway through which to disclose information.
769. The Tipping Off Exceptions Regulations include provisions to prevent disclosure of the identity of the individual who has made the SAR to the MLRO or designated officer where the disclosure is to another part of the financial group of which the relevant person is a part (Regulation 4); and another relevant person (Regulation 5). While the authorities do not have an overview on the extent of the use of these exceptions, they have clarified that they are aware of the use of the legislation within groups and have a more limited knowledge of use between institutions. In any

event, it allows a relevant person with a common customer to disclose to another that it has submitted a SAR in the circumstances set out in the law.

770. Where gateways are available, it is not JFCU practice to disclose personal details of staff of reporting institutions to overseas FIUs. Indeed, the content of SARs will be sanitised to protect the source. The one exception to this is where the content of SARs is shared with the Commission – where they are shared in their entirety to assist the Commission with its statutory functions.

Number of STR`s shared with JFSC

2008	2009	2010	2011	2012	2013	2014
39	165	228	248	212	155	158

Effectiveness and efficiency R.14

771. Some representatives stated that sometimes the FIU gives permission to disclose the submission of a SAR to another relevant person, not necessarily from the same group. This practice is covered in the Tipping-Off Exceptions Regulations which represents new legislation. Some institutions take a cautious approach and seek JFCU advice. Where advice is sought, appropriate guidance and specific consent may be given.

3.5.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

772. The FIU is encouraged to undertake periodical sector reviews of the numbers and quality of SARs and communicate feedback to the sectors concerned seeking to improve the quality and type of disclosures.
773. Part of SARs are generated by liaison notice system and, at the time of the onsite visit, by the approach used by the FIU to obtain additional information without previous SAR (practice which was utilised even after introducing the power to obtain information officially by FIU). Those practices generate ~10% of reports from all SAR`s. Authorities should use their rights granted by the legislation to obtain financial information with the aim to minimize SAR`s triggered by authorities and to avoid distortions in statistics.
774. The FIU should also consider if modifications to the electronic submission form could address some of the quality concerns identified.
775. Reporting entities have pointed out that FT reports are triggered mainly by sanction list matches and information from media. The authorities should also address gaps in guidance and training for reporting entities, including also on FT related aspects, seeking to improve the performance and value of the SAR reporting regime.

Recommendation 14

776. This Recommendation is met.

3.5.3 Compliance with Recommendations 13, 14 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	LC	Effectiveness: <ul style="list-style-type: none"> The performance of the SAR regime is impacted by issues related to quality of SARs received and reporting patterns where not all

		reports are initiated by institutions during detection of suspicious activities.
R.14	C	
SR.IV	LC	Effectiveness: <ul style="list-style-type: none"> The performance of the SAR regime is impacted by gaps in guidance and training for reporting entities on the scope of the FT reporting.

3.6 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 and 30)

3.6.1 Description and analysis

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated C in the IMF report)

Summary of 2009 factors underlying the rating

777. The Crown Dependency of Jersey was rated Compliant for Recommendation 23 in the last Mutual Evaluation Report by the IMF. Therefore no recommendations by the evaluators were made.

Regulation and Supervision of Financial Institutions (c. 23.1)

778. No major changes in the Jersey legal system have occurred since the last mutual evaluation.

779. Financial institutions in Jersey are required to comply with the AML/CFT requirements set out under the Money Laundering Order, which is an Order issued under the Proceeds of Crime Law. The Money Laundering Order applies to financial institutions (as well as DNFPBs) which includes relevant persons carrying on a regulated business (Article 1). Regulated business is defined as a financial services business in respect of which a person:

- is registered under the Banking Business (Jersey) Law 1991;
- holds a permit or is a certificate holder under the Collective Investment Funds (Jersey) Law 1988;
- is registered under the Financial Services (Jersey) Law 1998; or
- is authorized by a permit under the Insurance Business (Jersey) Law 1996;

780. Relevant persons carrying on regulated business, essentially, carry on the activities listed under the definition of financial institutions in the Glossary of the 2004 FATF Methodology. The Proceeds of Crime Law, however, exempts nine activities from the application of AML/CFT measures under the Money Laundering Order (these exemptions are assessed in detail under Recommendation 5). It is the view of the evaluation team that these exemptions are not all permitted under the 2003 FATF Recommendations.

781. The Jersey Financial Services Commission (the Commission) is the supervisory body responsible for the supervision of regulated persons carrying on regulated business and other financial institutions. The Commission's supervisory functions are set out under Article 2 and 5 of the Supervisory Bodies Law.

782. Article 8 of the Supervisory Bodies Law provides the Commission with power to do anything (a) that is calculated to facilitate; or (b) that is incidental or conducive to the performance of any of its functions under the Supervisory Bodies Law. This includes a general power to conduct reasonable routine examinations of a supervised person in relation to whom the supervisory body exercises supervisory functions.

Designation of Competent Authority (c. 23.2)

783. The Commission is the designated AML/CFT supervisory body for all relevant persons carrying on regulated business. The Commission's supervisory powers are set out under Article 2 and 5 of the Supervisory Bodies Law.

784. Article 2 of the Commission Law states that the Commission shall be independent of Chief Minister and of the States, except in certain specific circumstances set out in the law.

785. The following table contains details of the number of entities regulated for AML/CFT purposes.

Number at end of year	2008	2009	2010	2011	2012	2013	2014
FINANCIAL SECTOR							
Banks	47	47	46	40	42	42	34
Securities (Funds)¹⁰²	1,472	1,294	1,324	1,392	1,388	1,334	1,323
Insurance (Long Term and Composite Insurers)¹⁰³	70	70	71	75	71	70	69 ¹⁰⁴
MSBs and exchange offices	5	5	5	5	5	6	6
Other (MSBs Notification under Article 4 of the MSB Exemptions Order)¹⁰⁵	10	12	14	17	17	17	15
Other (MSBs Notification under Article 5 of the MSB Exemptions Order)¹⁰⁶ (matches Banking line)	47	47	46	40	42	42	34
Securities (Fund Service Business)	497	479	464	459	466	463	485
Securities (Investment Business)	113	106	105	100	97	95	90
Accountants & auditors	24	59	72	79	90	94	95
Trust and Corporate Service Providers (TCBs)¹⁰⁷	142	147	140	135	142	135	126
TCBs – Natural Persons¹⁰⁸	21	23	29	35	38	49	60

¹⁰² 'Funds' include Jersey Collective Investment Funds, non-Jersey domiciled Funds and Control of Borrowing Order authorised Funds. The Commission's supervisory responsibility for AML/CFT regulation varies across these different types of Fund categories. Funds comprised a total of 2,137 Pools of Assets as at 30 September 2014. 'Unregulated Funds' have not been included in the figures quoted above (of which there were 133 as at 30 September 2014)

¹⁰³ The total number of Insurance entities carrying on long term insurance comprise either Category A permit holders that are already regulated elsewhere (the majority in the UK, rest of EU and UK Crown Dependencies) where Jersey is the host regulator or Category B permit holders that are Jersey incorporated companies where Jersey Financial Services Commission is the home regulator. Category A permit holders almost entirely obtain business via Jersey registered investment businesses on a cross-border basis with very few having a branch office in Jersey. At present only 3 Category A permit holders have a branch office in Jersey and 3 Category B permit holders carry on long term insurance.

¹⁰⁴ There were around 180 regulated insurance companies registered with the Commission at the end of September 2014 of which only 69 were subject to AML/CFT supervision. The remainder of insurance businesses carry on general insurance business which is exempt from AML/CFT Supervision.

¹⁰⁵ Article 4 of the Financial Services (Money Service Business) (Exemptions) Jersey Order 2007 (MSB Exemptions Order) – limited exemption if turnover is less than specified amount

¹⁰⁶ Article 5 of the MSB Exemptions Order – limited exemptions for person regulated under Banking Business Law

¹⁰⁷ These figures include TCB groups (102 as at 30 September 2014). Within these groups there is a total of 703 'Participating Members' as at 30 September 2014. Participating Members are companies that support the TCB groups.

¹⁰⁸ Natural persons acting or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company

Number at end of year	2008	2009	2010	2011	2012	2013	2014
Notifications of other Schedule 2 business carried on by a financial institution only	0	65	67	58	60	62	59
Other (please specify and add further rows as applicable) Factoring, leasing, lenders							
Advice and services to the purchase of undertakings	0	0	0	1	1	1	3
Factoring	0	0	0	1	1	2	3
Financial Leasing	0	1	2	2	1	1	0
Investing, administering or managing funds	0	1	13	11	12	13	12
Issuing and administering means of payment	0	0	0	0	0	2	1
Lending	0	8	12	12	17	16	17
Money broking	0	0	1	3	3	3	2
Participation in security issues	0	2	4	6	8	8	9

Recommendation 30 (all supervisory authorities) (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

786. Recommendation 30 (consolidated rating) was rated largely compliant in the last assessment. A recommendation was made to the Commission to increase human resources in order to deal with the increased workload.

Adequacy of Resources (c. 30.1)

787. The Commission is a statutory body corporate set up under the Commission Law. The Board of Commissioners, which is the governing body of the Commission, comprises nine Commissioners (including a Chairman) from Jersey and outside the island. Additionally, the Commission Law provides that the composition of the Board of Commissioners shall be such as to secure a proper balance between the interests of persons carrying on the business of financial services, the users of such services and the interests of the public.

788. The Commission is funded through fees and charges levied in line with Article 21 of the Supervisory Bodies Law (in respect of the Commission's supervisory functions for DNFBPs and some financial institutions) and Articles 14 and 15 of the Commission Law (in respect of the Commission's functions under the regulatory laws). Each supervised sector has its own fee structure that determines the level of fees to be paid by any single entity. Details of the charging methodologies can be found on the Commission's website. In order to set fees, the Commission must first consult with, and have the agreement of, the industry. Article 21(2) of the SBL and Article 15(2) of the Commission Law provide that fees are to be set at such a level as is necessary to: a) raise sufficient income to allow the Commission to carry out its functions and b) provide a reserve of such amount as is considered to be necessary. For the past nine years the Commission has recorded a surplus of income over expenditure. The Commission publishes its policy in respect of the amount of reserves that it considers necessary in its annual report. It is the Commission's policy to retain reserves equal to six month's operating expenditure plus the average of the last five years' cost of investigations and litigation.

789. The Commission has a permitted headcount of 130 staff (compared to 118 in December 2008). As at May 2014, the Commission employed 121 full time staff and 9 part time staff. The Commission has a Financial Crime Policy Division with four full time staff (a director and three senior managers) and one administrative support staff. The division's staff has experience of

working in the AML/CFT field in other jurisdictions. Additionally, the Commission has a supervisory AML Unit – formed in 2007 – which consists of three full time staff, which is headed by a senior manager reporting to a deputy director. This manager is responsible for oversight of DNFPBs and persons carrying on money service business.

790. The Commission's headcount has grown in response to an increase in workload, with for example the additional task to supervise lawyers. The Commission has a total of 65 supervisory staff who are engaged in all aspects of supervision (including AML/CFT). These staff can draw upon the specialist support provided by the Financial Crime Policy Division. The figures provided under Recommendation 23 show an increase in the numbers of supervised entities and at the same time a decrease in the number of onsite visits conducted by the Commission. The same applies to the number of specific AML/CFT on-site visits conducted for the whole financial and non-financial sector. It goes from 115 (2009), 96 (2010), 68 (2011), 49 (2012) to 42 (2013) with a small rise to 48+ in 2014. The number of AML/CFT visits combined with general supervision has slightly decreased during the period concerned going from 184 (2009) to 113 (2014).

791. A more focussed analysis of only the Financial Institutions including TCSPs, shows the following:

Ratio of AML/CFT examinations to FIs	(including TCSPs)					
	2009	2010	2011	2012	2013	2014
Total Entities	584	553	538	547	548	541
Specific AML onsites	27	12	11	6	13	12
General supervision, AML included	69	52	50	52	72	65
Total AML/CFT inspections	96	64	61	58	85	77
	16%	12%	11%	11%	16%	14%

792. The figures in the table above do not take into account that managed fund entities are all separately included, while they, according to the Jersey authorities, are examined through their appointed Manager rather than individually. The table below shows the position once managed fund entities have been excluded. This has the effect of raising the examination coverage ratio for FIs and TCSPs from 9% to 14% in 2014 and to an average of 13% for the years 2009-14.

793. Additional information was provided by the Jersey authorities regarding the onsite examination frequency. The authorities explained that their policy for onsite examination frequency is as follows:

High Risk Entities	Every 1 to 2 Years
Medium High Risk Entities	Every 2 to 3 Years
Medium Low Risk Entities	Every 4 to 5 Years
Low Risk Entities	On an ad-hoc basis if red flags are identified, and as part of thematic examinations

794. The Commission has set a higher assurance level for AML/CFT risks in the banking and TCSP sectors which results in more frequent and intensive onsite and offsite supervision.

795. This is reflected in the average onsite inspection ratios for the period 2009-14:

Sector	Average inspection coverage (2009-14)
FIs overall (including TCSPs)	13%
Banks	21%

TCSPs	20%
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Professional Standards and Integrity (c. 30.2)

796. The Commission's recruitment policy is intended to ensure the recruitment of individuals of high integrity who hold the required skills. To this end, the Commission conducts a series of pre-employment checks, including police checks, credit-checks, obtains references, and conducts health screening. It requests that all officers at manager level and above hold a professional qualification or are in the process of obtaining one and requests copies of original certificates to certify that the qualification is held when a new employee joins the Commission. All staff, on commencement of employment, are required to sign a declaration concerning confidentiality and conflicts of interest (in line with the staff handbook), and this declaration is reviewed annually as part of each member of staff's performance review. In addition, a confidentiality and conflict of interest policy is designed by the Commission.

Adequate Training (c. 30.3)

797. Upon commencement of employment, staff are required to undertake a bespoke on-line AML/CFT learning module. This is mandatory, applies to all levels and is repeated annually. In addition, internal training was provided on (for instance) PEPs and International Sanctions, Risk Management for Trustees and Administrators and updates to the AML/CFT Handbooks. The Commission is regularly requested to deliver external AML training and to speak at overseas events. Members of the supervisory body also participated in a number of externally delivered training events related to AML/CFT.

798. The Commission is in the process of developing and implementing an 'Induction framework', which includes modules such as "Developments in AML and implications for Supervision", "AML and CFT Risk" as well as a competency assessment.

799. The Commission has a learning and development strategy in place which includes professional training (leading to a formal qualification), technical in house training, leadership and management development programmes and skills development programmes.

Authorities' powers and sanctions

Recommendation 29 (rated C in the IMF report)

Summary of 2009 factors underlying the rating

800. Jersey was rated compliant for recommendation 29; therefore no recommendations by the evaluator were made in the last IMF evaluation report.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

801. The powers of the Commission are set out under several laws: Supervisory Bodies Law, Banking Business Law, Collective Investment Funds Law; Financial Services Law and Insurance Business Law.

802. Under Article 11(1) of the SBL, a person who intends to carry on a specified financial services business (those specified in the Schedule to the SBL) must register under Article 13 or 15 of the SBL ("**type A**"), except where that person is carrying on regulated business ("**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.

803. A person carrying on regulated business that does not also carry on a specified financial services business ("**type C**") is not required to take any action under the SBL, since its fitness and properness will have been considered by the Commission under the regulatory laws and it will be registered thereunder.

804. The SBL provides the Commission with a number of powers to monitor and ensure compliance by all relevant persons (type A, type B, and type C) with AML/CFT legislation. Insofar as these powers relate to the conduct of on-site inspections and collection of information, they are set out in the following sections. Appropriate sanctions are available and are analysed under Recommendation 17 of this report.
805. The Supervisory Bodies Law empowers the Commission to require the provision of information and documents (Article 30), to conduct investigations (Article 31) and, with appropriate authority, to enter and search premises of supervised entities (Article 32).
806. With respect to a relevant person that is type A, the Commission may revoke a registered person's licence under Article 18 of the Supervisory Bodies Law (or to refuse to licence an applicant under Article 14 or 15 of the Supervisory Bodies Law). With respect to a relevant person that is type A or type B, the Commission may set conditions on a licence under Article 17 (a deemed licence in the case of type B). In the case of all relevant persons, the Commission may issue directions (Article 23) and public statements that warn the public and/or censure a relevant person (Article 26).
807. Under Article 24 of the Supervisory Bodies Law, on the application of the Commission, the Royal Court may issue an injunction restraining a relevant person from committing a contravention (see 17.1) or to take steps to remedy the contravention. Again at the application of the Commission, the Royal Court may make an order making a relevant person subject to such supervision, restraint or conditions as the Court may specify.
808. These powers under the SBL largely mirror the powers 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 under the regulatory laws to the continued appointment of a principal or key person, and the Royal Court (or the Commission in the case of a relevant person that is a deposit-taker) has a power to appoint a manager to manage a person carrying on regulated business.

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2)

809. Under Article 8(2) of the Supervisory Bodies Law, the Commission has a general power to conduct routine examinations. In practice, the Commission conducts two types of examinations of relevant persons that are carrying on regulated business: supervision and thematic examinations.
810. Supervision examinations are wide-ranging and generally cover the approach of a person carrying on regulated business to its business and governance thereof. A supervision visit might take place for a number of reasons including: shortly after a person has been registered, or where a trigger event has occurred, such as senior management has changed or risk information has been updated.
811. Thematic examinations concentrate on a specific area of conduct across a segment of the industry and tend to be preceded by a self-assessment questionnaire.
812. On-site examinations are conducted on a risk-sensitive basis, in accordance with the Commission's onsite examination protocols, which include policies, checklists and guidance for assessing compliance with AML and CFT requirements. The AML Unit applies this approach to money service businesses. Depending on the nature of the on-site examination, Commission staff may review the relevant person's policies and procedures, conduct sample testing of systems and controls and/or review a sample of customer files. The on-site examination may also include consideration of Board minutes. The Commission uses so called 'route planners' that set out in the detail the processes to be followed in the course of an examination.
813. Following all on-site examinations, the Commission provides the relevant person with a report which identifies issues that may have been identified and requires the relevant person to rectify

the issues within a given time period. Follow-up of action taken to remediate the identified issues is undertaken by the Commission.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

814. Under Article 8(2) of the Supervisory Bodies Law, which provides for the general power to conduct routine examinations, the Commission may:

- require a relevant person to supply information in a format and at times as specified by the body;
- require a relevant person to provide answers to questions; and
- require a relevant person to allow officers or its agents to enter the relevant person's premises.

815. Under Article 30 of the Supervisory Bodies Law, the Commission may by notice in writing require a relevant person (or a "principal" or "key" or other defined person thereof) to:

- provide to it, at such time and place as may be specified, information and documents of a specified description that are reasonably required; and
- attend at such place and time as may be specified in the notice and answer questions which the supervisory body reasonably requires the person to answer.

816. Such information, documents or questions may relate to any matter that is relevant to the performance of the Commission's functions, including financial services business that is carried on by a relevant person, compliance with the SBL and any Code of Practice made thereunder, a condition of any grant of registration or a direction given under the SBL. This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis a relevant person has made to detect unusual or suspicious transactions.

817. Any person who without reasonable excuse fails to comply with a requirement under Article 30 of the SBL shall be guilty of an offence and liable to imprisonment for a term of 6 months and an unlimited fine.

818. These tools mirror those that are also available to the Commission under the regulatory laws, which apply in addition to relevant persons that are type B and type C.

819. No court order is needed to compel production of or to obtain access for supervisory purposes.

Powers of Enforcement & Sanction (c. 29.4)

820. In the case of a relevant person that is type A, the Commission may revoke a registered person's licence under Article 18 of the SBL (or refuse to licence an applicant under Article 14 or 15 of the SBL). In the case of a relevant person that is type A or type B, the Commission may set conditions on a licence under Article 17 (a deemed licence in the case of type B). In the case of all relevant persons, the Commission may issue directions (Article 23) and issue public statements that warn the public and/or censure a relevant person (Article 26).

821. Under Article 24 of the SBL, on the application of the Commission, the Royal Court may issue an injunction restraining a relevant person from committing a contravention (see 17.1) or to take steps to remedy the contravention. Again at the application of the Commission, the Royal Court may make an order making a relevant person subject to such supervision, restraint or conditions as the Court may specify.

822. Article 42(1) of the SBL provides that, where an offence committed by a relevant person is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is, or was, a principal person in relation to that person, that principal person shall be guilty of the offence and liable in the same manner to the penalty provided for that offence. The term "principal person" is defined in Article 1(1) of the SBL and

includes any director and any person who directly or indirectly holds 10% or more of the share capital issued by a relevant person.

823. In addition, Article 42(2) of the Supervisory Bodies Law provides that, where an offence committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer, the person shall also be guilty of the offence and liable in the same manner as the company to the penalty provided for that offence. Article 42(4) of the SBL subsequently provides that any person who aids, abets, counsels or procures the commission of an offence under the SBL will also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

824. These powers largely 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 person carrying on regulated business.

825. The matter of sanctions is further addressed in the analysis of Recommendation 17.

Recommendation 17 (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

826. Jersey was rated LC in the previous IMF assessment. The shortcoming that was identified was that the supervisory authority does not have the power to apply monetary fines among the range of available sanctions.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

Criminal Sanctions

827. Under Article 34D of the Proceeds of Crime Law and Article 21 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, failure by an employee of a relevant person to make a report, where he has knowledge, suspicion, or reasonable grounds for knowing or suspecting that another person is engaged in ML or FT, is an offence and may be punished by up to five years imprisonment or an unlimited fine or both.

828. Under Article 35 of the Proceeds of Crime Law, and Article 35 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, the offence of “tipping-off” (except where permitted under the Tipping Off Exceptions Regulations) is an offence and may be punished by up to five years imprisonment or a fine or both.

829. Under Article 37(7) of the Proceeds of Crime Law, failure by a relevant person to comply with an obligation that is set out in the Money Laundering Order is an offence and may, in the case of a body corporate, be punished by a fine, and, in the case of an individual, be up to two years imprisonment, a fine or both.

Civil Sanctions

830. Under Article 24(1) of the SBL, on the application of a designated supervisory body, the Royal Court may issue an injunction restraining a relevant person from committing a contravention of

- Article 10 of the SBL (unauthorised business);
- any condition placed on registration;
- any direction given; or
- the Money Laundering Order.

831. Article 24(2) of the SBL also allows the Court to make an order for steps to be taken to remedy a contravention. Again, at the application of a designated supervisory body, the Royal Court may make an order under Article 25 of the Supervisory Bodies Law making a relevant person subject to such supervision, restraint or conditions as the Court may specify if it considers that a relevant person is not fit and proper (where it is required to be so) or where it is likely that a relevant person will commit a contravention under Article 24(1).

832. Unauthorised Business – number of cases and sanction applied

Year	Number of potential cases	Number still under investigation	Sanction applied		
			Written warning	Public statement	No offence revealed
2009	25	0	10	13	2
2010	30	0	17	6	7
2011	26	0	7	17	2
2012	39	0	24	3	12
2013	28	0	10	10	8
2014	33	9	14	5	4

Administrative sanctions

833. In the case of a relevant person that carries on a specified financial services business (those specified in the Schedule to the SBL) and must register under Article 13 or 15 of the Supervisory Bodies Law (a “**type A**” relevant person), a designated supervisory body is able to revoke a registered person’s licence under Article 18 of the SBL (or to refuse the licence an applicant under Article 14 or 15 of the SBL). Article 18 applies where a type A relevant person, a principal person in relation to the type A relevant person, or a key person in relation to a type A 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) where the designated supervisory body may refuse to register an applicant.

834. In the case of a relevant person that is type A or a type A person that is also carrying on regulated business (a “**type B**” person), 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 set out its reasons for doing so (which are not limited by law). Under Article 17(7) a type A or type B person that fails to comply with any condition shall be liable to imprisonment for a term of two years and a fine.

835. 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).

836. Article 23 provides for a direction to be issued, inter alia, where a person has 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. A direction issued under Article 23 may, inter alia:

- require anything to be done or not done, or impose any prohibition, restriction or limitation, or any other requirement;
- require that any principal person, key person, or person having functions, in relation to a person carrying on a supervised business be removed or removed and replaced by another person acceptable to the designated supervisory body (the Commission);

- require a specific individual, with respect to a supervised business, not to perform a specified function (or any function at all); and
 - require a person carrying on a supervised business to cease operations and to wind up its affairs.
837. 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 (unauthorised business);
 - any condition placed on registration;
 - any direction given;
 - any Code of Practice that applies to a person; or
 - the Money Laundering Order.
838. 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**” (a person carrying on regulated business that does not also carry on a specified financial services business) – except that, in addition, the Commission may object to the appointment or 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 person carrying on regulated business.
839. In order to meet the earlier identified shortcoming primary legislation that would give the Commission the power to impose administrative financial penalties on regulated businesses for contraventions of the regulatory Codes of Practice (which includes the Handbook for Regulated Financial Services Business) has been lodged with the States of Jersey and was due to be debated late November/early December 2014. In the meantime the law has been accepted by Jersey Parliament. It gives the opportunity to apply sanctions ranging from 4%, 6% to 8% of general income, with a minimum of €15,000 and no maximum.
840. As well as the imposition of the administrative financial penalty itself, the proposed legislation provides the Commission with the power to issue a public statement when a penalty would be an additional ground on which the Commission may revoke a regulated business’s licence.

Decision Making Process

841. The Commission (the designated supervisory body) has published a guidance note on its decision making process which is intended to be a general guide to the way in which the Commission normally approaches the exercise of its statutory powers that involve the making of a particular type of administrative decision.
842. The guidance note covers the administrative decision that allows the subject of the decision a statutory right of appeal to the Royal Court in the event that the subject considers that the decision is unreasonable having regard to all the circumstances. Except when the circumstances require that urgent action is essential the guidance note will normally apply to decisions that may be taken by the Commission to:
- refuse an application for registration;
 - revoke a registration, where that decision is not taken at the request of the person;
 - attach a condition to a registration or substitute, vary or revoke any existing condition, where the person has not consented to such action;

- in the case of a type B or C person - object to the appointment, or continued appointment, of a principal person, key person, or an actuary;
- publish a public statement;
- issue a direction to require a person, who has not already taken that decision voluntarily, to cease operations and to wind up its affairs;
- issue a direction to prevent or restrict the employment of an individual; and
- refuse an application to withdraw or vary, in whole or in part, a direction that has been issued pursuant to the guidance note.

843. The range of the sanctions appears to be largely effective, proportionate and dissuasive. Depending on the acceptance of the lodged law for administrative fines the range of available sanctions is appropriate as is the maximum fine voted for.

Designation of Authority to Impose Sanctions (c. 17.2)

844. In the case of criminal and civil sanctions, action may be taken by the Royal Court at the instigation of the Attorney General and a designated supervisory body respectively. In the case of administrative sanctions under the Supervisory Bodies Law, these may be applied by the Commission or a designated supervisory body. In the case of the regulatory laws, action may be taken by the Commission.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

845. Article 37(5) of the Proceeds of Crime Law provides that, where an offence under the Money Laundering Order by a relevant person that is a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate purporting to act in any such capacity, he or she, as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Article 37(6) of the Proceeds of Crime Law provides for the position where the offence is committed by an unincorporated association.

846. Where an offence is committed under the SBL, Article 42(1) provides that, where an offence committed by a person is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is, or was, a principal person in relation to that person, that principal person shall be guilty of the offence and liable in the same manner to the penalty provided for that offence. The term “principal person” is defined in Article 1(1) of the Supervisory Bodies Law and includes any director and any person who directly or indirectly holds 10% or more of the share capital issued by a relevant person.

847. In addition, Article 42(2) of the SBL provides that, where an offence committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer, the person shall also be guilty of the offence and liable in the same manner as the company to the penalty provided for that offence. In addition, any person who aids, abets, counsels or procures the commission of an offence under the Supervisory Bodies Law will also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

848. Similar provisions appear in the regulatory laws, e.g. Article 41(3), (4), and (6) of the Financial Services Law. Article 2 of the Criminal Offences (Jersey) Law 2009 is also relevant in this context.

Range of Sanctions – Scope and Proportionality (17.4)

849. There is a range of sanctions available which can be applied in a manner proportionate to the severity of a situation. All of the following sanctions are available:

- Written warnings – all relevant persons.
- Directions to comply with specific instructions and to bar individuals from employment (Article 23 of the Supervisory Bodies Law) – all relevant persons.
- Requesting regular reports from a relevant person on the measures that it is taking, e.g. in order to address a matter highlighted through an on-site examination (a general power that is available) – all relevant persons.
- Fines for non-compliance (criminal sanction) – all relevant persons.
- Restricting the powers of managers, directors or controlling owners (through conditions under Article 17(3) of the Supervisory Bodies Law, a direction under Article 23 of the Supervisory Bodies Law, or intervention of the Royal Court under Articles 24 and 25 of the Supervisory Bodies Law) – all relevant persons.
- Objecting to the continued appointment of principal and key persons – type C relevant persons.
- Appointment of a manager – type C relevant persons.
- Revocation of registration – under Article 18 of the Supervisory Bodies Law (and equivalent provisions in the regulatory laws).
- Requiring specific individuals to complete specific training.

Statistics regarding sanctions applied

850. The following tables are intended to provide an indication of the use of the supervisory tools, including the application of sanctions.

2009								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
FINANCIAL SECTOR								
Banks	24	11		1				N/A
Securities (Funds & Investment Business)	47	21		2	2		1	N/A
Insurance	4	4		1			1	N/A
MSBs and exchange offices	3	1						N/A
Trust and company service providers	56	48	13		2	1	2	N/A
NON FINANCIAL SECTOR								
AML Unit ¹⁰⁹	88	37						
Casinos								N/A

¹⁰⁹ An aggregated figure for all DNFBPs except for Trust and Company Service Providers

2009								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
<i>Real estate</i>	27	6						N/A
<i>Dealers in precious metals and stones</i>								N/A
<i>Lawyers</i>	15	8						N/A
<i>Notaries</i>								N/A
<i>Accountants & auditors</i>	38	17						N/A
<i>Other</i>								N/A
<i>Lenders</i>	7	6						
<i>Participation in securities issues</i>	1							
TOTAL	222	122	13	4	4	1	4	N/A

2010								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
FINANCIAL SECTOR								
Banks	23	7	1	6	1			N/A
Securities (Funds & Investment Business)	57	25	1	10	1			N/A
Insurance	2	1		5				N/A
MSBs and exchange offices	3	2						N/A
Trust and company service providers	39	29	14	5	6			N/A
NON FINANCIAL SECTOR								
AML Unit	85	27						
Casinos								N/A
Real estate	30	7						N/A
Dealers in precious metals and stones								N/A
Lawyers	23	10						N/A

2010								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
<i>Notaries</i>								N/A
<i>Accountants & auditors</i>	26	8						N/A
<i>Other</i>								N/A
<i>Lenders</i>	1							
<i>Factoring</i>	1							
<i>Financial Leasing</i>	1	1						
<i>Participation in securities issues</i>	2	1						
<i>Money brokers</i>	1							
TOTAL	209	91	16	26	8	0	0	N/A

2011								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
FINANCIAL SECTOR								
Banks	22	2		6				N/A
Securities (Funds & Investment Business)	57	20		12	1		3	N/A
Insurance	6	3		6				N/A
MSBs and exchange offices	3	1						N/A
Trust and company service providers	47	34	3	12	6	5	2	N/A
NON FINANCIAL SECTOR								
AML Unit	57	18						
Casinos								N/A
Real estate	14	6						N/A
Dealers in precious metals and stones								N/A
Lawyers	9	4						N/A
Notaries								N/A
Accountants &	19	7					1	N/A

2011								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
<i>auditors</i>								
<i>Other</i>								N/A
<i>Lenders</i>	5	1						
<i>Financial Leasing</i>	2							
<i>Participation in securities issues</i>	1							
<i>Advise and services to the purchase of undertakings</i>	1							
<i>Investing and administering or managing funds</i>	6							
TOTAL	192	78	3	36	7	5	6	N/A

2012								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
FINANCIAL SECTOR								
Banks	14	5		5	1			N/A
Securities (Funds & Investment Business)	54	15		10	2		1	N/A
Insurance	8	4		1	1	1		N/A
MSBs and exchange offices	2	0						N/A
Trust and company service providers	58	33	5	7	1	3	3	N/A
NON FINANCIAL SECTOR								
AML Unit	43	8						
Casinos								N/A
Real estate	9	2						N/A
Dealers in precious metals and stones								N/A
Lawyers	8	2						N/A

2012								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
<i>Notaries</i>								N/A
<i>Accountants & auditors</i>	13	1		1	1			N/A
<i>Other</i>				1				N/A
<i>Lenders</i>	6	2						
<i>Factoring</i>	1							
<i>Participation in securities issues</i>	2							
<i>Money brokers</i>	1							
<i>Investing and administering or managing funds</i>	3	1						
TOTAL	179	65	5	25	6	4	4	N/A

2013								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
FINANCIAL SECTOR								
Banks	19	13		1				N/A
Securities (Funds & Investment Business)	74	32	4	9		2		N/A
Insurance	3	1						N/A
MSBs and exchange offices	0	0						N/A
Trust and company service providers	48	39	3	28	1		1	N/A
NON FINANCIAL SECTOR								
AML Unit	29	16						
Casinos								N/A
Real estate								N/A
Dealers in precious metals and stones								N/A

2013								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
<i>Lawyers</i>	5	2						N/A
<i>Notaries</i>								N/A
<i>Accountants & auditors</i>	16	11						N/A
<i>Other</i>								N/A
<i>Lenders</i>	3	3						
<i>Participation in securities issues</i>	2							
<i>Advice and services to the purchase of undertakings</i>	1							
<i>Money brokers</i>	1							
<i>Investing and administering or managing funds</i>	1							
TOTAL	173	101	7	38	1	2	1	N/A

2014								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
FINANCIAL SECTOR								
Banks	13	6	0	0	0	0	0	N/A
Securities (Funds & Investment Business)	63	32	0	1	1	0	0	N/A
Insurance	0	0	0	0	0	0	0	N/A
MSBs and exchange offices	6	6	0	0	0	0	0	N/A
Trust and company service providers	42	32	0	3	12	1	2	N/A
NON FINANCIAL SECTOR								
AML Unit	36	27	0	0	0	0	0	

2014								
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied					Number of sanctions taken to court (if applicable)
			Written warning	Directions	Banning Directions	Withdrawal of license/ negotiated closure	Cases referred to JFCU	
<i>Casinos</i>	0	0	0	0	0	0	0	N/A
<i>Real estate</i>	2	2	0	0	0	0	0	N/A
<i>Dealers in precious metals and stones</i>	0	0	0	0	0	0	0	N/A
<i>Lawyers</i>	13	12	0	0	0	0	0	N/A
<i>Notaries</i>	0	0	0	0	0	0	0	N/A
<i>Accountants & auditors</i>	13	13	0	0	1	0	0	N/A
<i>Other</i>								
<i>Lenders</i>	2	2						N/A
<i>Factoring</i>	1	1						N/A
<i>Issuing and administering means of payment</i>	1	1						N/A
<i>Participation in securities issues</i>	3	3						N/A
<i>Investing and administering or managing funds</i>	1	1						N/A
TOTAL	160	106	0	4	14	1	2	N/A

851. In general, the impression is that the Commission uses the sanctions and measures available rather effectively.

852. In the meantime the new administrative monetary fine has been added to the range of sanctions which may be used by the supervisor. The proportionality of the sanctioning regime will be strengthened by this measure. A sufficiently wide range of potential sanctions is now available, which, if effectively used, may be dissuasive.

853. The evaluators noted that one case of non-reporting is before the criminal courts. The evaluators encourage close attention to this issue in supervisory activities and firm prosecutorial action for such breaches.

854. The AML/CFT Handbooks give quite some flexibility when it provides for high level principles and enables relevant persons to determine the measures most appropriate for its circumstances and to implement different measures to those set out in the Guidance Notes, as long as it can demonstrate to the Commission that such measures also achieve compliance with the Money Laundering Order and the AML/CFT Handbooks. This might lead to effectiveness issues when the Commission wants to apply the more heavy sanctions. At the same time it seems not to have been a problem so far when applying 'banning directions' and revoking of licences.

Market entry

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

855. Measures to prevent criminals from holding or being the beneficial owner in a financial institution are set out in the SBL, Collective Investment Funds Law, Banking Business Law, Insurance Business Law, and Financial Services Law.
856. Article 10 of the SBL makes it an offence for a relevant person to carry on an activity that is specified in the Schedule to the SBL without being registered under the SBL. The Schedule to the SBL lists all of the activities and operations that are conducted by a person that is a “financial institution” under the FATF Recommendations (level 1 registration), except activities that are covered by the regulatory laws. The regulatory laws include similar provisions.
857. Fit and proper tests are applied by the Commission on the basis of Articles 13 and 14 of the SBL. Article 14(3) provides that the Commission may refuse to register an applicant (a person who intends to carry on a specified Schedule 2 business) for a level 1 registration (specified in the Schedule to the Supervisory Bodies Law) on the ground that the applicant, a principal person in relation to that applicant, or a key person in relation to that applicant, is not a fit and proper person. Article 14(4) provides that a person is not a fit and proper person if, *inter alia*, that person:
- has been convicted of a ML or FT offence;
 - has been convicted of an offence involving fraud or other dishonesty;
 - is otherwise considered not to be fit and proper for reasons related to the risk of ML or FT.
858. Article 14(3) and (4) provide that an applicant principal person in relation to that applicant, or a person in relation to that applicant is not a fit and proper person if, *inter alia*, that person is not considered to be fit and proper for reasons related to the risk of money laundering. This may include the case of a principal person or key person who is an associate of a criminal, but who is not a criminal themselves.
859. The term “principal person” is defined in Article 1(1) of the SBL and includes any director and any person who directly or indirectly holds 10% or more of the share capital issued by a relevant person. The term “key person” refers to the compliance officer (where one has been appointed), MLCO, and MLRO.
860. The definition of principal person also includes a person who has a holding which makes it possible to exercise significant influence and a person in accordance with whose directions any director is accustomed to act.
861. In addition Article 23(2)(b) of the SBL provides that a direction may require any principal person, key person or person having a function to be removed or removed and replaced by another person acceptable to the supervisory body. Article 23(2)(c) of the Supervisory Bodies Law provides for a direction to ban any individual from being employed by a relevant person.
862. Similar provisions are set out in the regulatory laws. Article 7 of the Collective Investment Funds Law, Article 10 of the Banking Business Law, Article 7 of the Insurance Business Law, and Article 9 of the Financial Services Law provide that the Commission may refuse to register or may revoke the registration of a relevant person, *inter alia*:
- because the relevant person does not have integrity;
 - because of the persons employed by or associated with the relevant person, or who own or control it; or
 - because the relevant person, or persons associated with it, have been convicted of an offence involving (inter alia) ML, FT, fraud or dishonesty.

863. Where a relevant person is carrying on regulated business, then, in addition to the power to turn down an application or revoke a licence on the basis that a relevant person is not fit and proper and to prevent (remove or ban) any individual from being employed by a relevant person, Article 13 of the Financial Services Law allows the Commission to object to the appointment or continued appointment of a principal person or key person on the basis that the person in question is not fit and proper. Similar provisions are also set out in Article 12A of the Collective Investment Funds Law, Article 24 of the Banking Business Law, and Article 23 of the Insurance Business Law. The term “principal person” is defined in Article 1(1) of the Financial Services Law and includes any director and any person who directly or indirectly holds 10% or more of the share capital issued by a relevant person. The term “key person” refers to the compliance officer, MLCO, and MLRO.

864. All principal persons and key persons are assessed for fitness and propriety via an online Personal Questionnaire process. Each individual must obtain the Commission’s confirmation of ‘No Objection’ prior to their appointment.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

865. The provision of money service business is covered by the Financial Services Law. Under Article 2(9) of the Financial Services Law, a person carries on money service business if the person carries on the business of any of the following:

- a bureau de change;
- providing cheque cashing services;
- transmitting or receiving funds by wire or other electronic means; or
- engaging in money transmission services.

866. A person to whom the Financial Services Law applies who intends to carry on financial service business shall make an application to the Commission to be registered.

867. Inter alia, Article 9 of the Financial Services Law provides for the Commission to refuse to register (or to revoke a licence) where it is not satisfied that the applicant (or person carrying on regulated business) is a fit and proper person to be registered.

868. Article 7 of the Financial Services Law prohibits the carrying on of unauthorised money service business, except where an exemption applies. A relevant person that is covered by Articles 4 or 5 of the Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007 that has annual turnover of less than £300,000 or is registered under the Banking Business Law need not apply for registration under Article 9. In order to benefit from this exemption, it must notify the Commission that it has done so. The Commission holds a register of those businesses that have notified it under the Order. Currently this exemption is used by 6 hotels that use the exemption for the exchange of currencies for their customers.

869. Evaluators have concerns about the level of the turnover threshold of £300,000 for money service business which in their view is high, in particular for hotels (6), travel agents (2) or pharmacies (1).

Licensing of other Financial Institutions (c. 23.7)

870. All financial institutions within the FATF definition operating in Jersey are subject to licensing requirements.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

871. The structure of the SBL is extensively modelled on the regulatory laws – which address Core Principles that are set by the Basel Committee, IOSCO, and the IAIS. In particular, Article 7 of the Collective Investment Funds Law, Article 10 of the Banking Business Law, Article 7 of the Insurance Business Law, and Article 9 of the Financial Services Law provide that the Commission may refuse to register or may revoke the registration of a relevant person, inter alia because the relevant person does not have integrity, is not competent, has inadequate financial standing, or has an inappropriate structure or organisation; because of the persons employed by or associated with the relevant person, or who own or control it; or because the relevant person or persons associated with it, has been convicted of an offence involving (inter alia) ML, FT, fraud or dishonesty.
872. The risk that a relevant person that is carrying on regulated business may be involved in ML or FT is considered to be an integral part of the Commission's risk-based approach to supervision. The Commission applies comprehensive risk-modelling to its supervision and regards ML and FT as one of the five key risks to the Guiding Principles that the Commission aims to achieve under Article 7 of the Commission Law.
873. With respect to global consolidated supervision, the Commission is not the ultimate home supervisor for any of the banking groups operating in Jersey. However, the Commission does have oversight responsibilities, as an intermediate home supervisor, for non-Jersey branches and subsidiary operations of Jersey incorporated deposit-takers.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

874. The provisions outlined above that are set out in the SBL and Financial Services Law cover persons carrying on money service business.
875. The Commission's AML Unit has monitored compliance by relevant persons carrying on money service business since August 2008. Onsite examinations are conducted in accordance with the Commission's onsite examination protocols, which include policies, checklists and guidance for assessing compliance with AML and CFT requirements and focuses amongst other things on the implementation of the Code of Practice for Money Service Businesses.
876. The Commission may use Article 32 of the Financial Services Law to require the provision of information and documents relating to any matter that is relevant to the performance of the Commission's functions, including: (i) the financial service business of the registered person or formerly registered person concerned; (ii) the integrity, competence, financial standing or organisation of that person, of any person who is or was a principal person, or key person, in relation to the registered person or formerly registered person, and of any associate of such a principal person; or (iii) the compliance by any of those persons with the Financial Services Law and any Regulation, Order or Code of Practice made, or a condition of any grant of registration, or a direction given under the Financial Services Law.

Supervision of other Financial Institutions (c. 23.7)

877. All financial institutions within the FATF definition operating in Jersey, (except for those exempted under Proceeds of Crime Law), are subject to Commission regulation and supervision and to the full range of AML/CFT requirements.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

Table On-site visits

	Total number of entities						Total number of on-site visits conducted					
FINANCIAL SECTOR												
	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Banks	47	46	40	42	42	34	24	23	22	14	19	13

	Total number of entities						Total number of on-site visits conducted					
Securities – Funds Service Business	479	464	459	466	463	485	16	32	34	48	49	36
Securities – Investment Business	106	105	100	97	95	90	31	25	23	6	25	29
Insurance – Insurance companies	70	71	75	71	70	69	4	2	6	8	3	0
MSBs and exchange offices	5	5	5	5	6	6	3	3	3	2	0	6
Trust and company service providers (including personal fiduciary licensees)	170	169	170	180	184	186	56	39	47	58	48	42
NON FINANCIAL SECTOR												
	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Casinos	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Real estate	35	37	36	35	34	42	27	30	14	9	0	2
Dealers in precious metals and stones	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Lawyers	38	39	38	41	45	48	15	23	9	8	5	13
Notaries	0	0	0	1	1	1	N/A	N/A	N/A	0	0	0
Accountants & auditors	59	72	79	90	94	95	38	26	19	13	16	13
Other												
	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Lenders	8	12	12	17	16	17	7	1	5	6	3	2
Factoring	0	0	1	1	2	3	0	1	0	1	0	1
Financial Leasing	1	2	2	1	1	0	0	1	2	0	0	0
Participation in securities issues	2	4	6	8	8	9	1	2	1	2	2	3
Advice and service to the purchase of undertakings	0	0	1	1	1	3	0	0	1	0	1	0
Money brokers	0	1	3	3	3	2	0	1	0	1	1	0
Issuing and administering means of payment	0	0	0	0	0	1	N/A	N/A	N/A	N/A	N/A	1
Investing and administering or managing funds	1	13	11	12	13	12	0	0	6	3	1	1
TOTAL	1021	1040	1038	1071	1078	1103	222	209	192	179	173	162

	Number of AML/CFT specific on-site visits conducted						Number of AML/CFT combined with general supervision on-site visit carried out					
FINANCIAL SECTOR												
	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Banks	11	6	2	3	10	6	9	1	0	2	3	0
Securities – Funds Service Business	0	0	5	1	2	0	6	14	6	10	15	8
Securities – Investment Business	0	0	0	0	0	0	15	10	9	4	15	25
Insurance – Insurance companies	0	0	0	0	1	0	4	1	2	3	0	0
MSBs and exchange offices	3	3	3	2	0	6	N/A	N/A	N/A	N/A	0	0
Trust and company service providers (including personal fiduciary licensees)	13	3	1	0	0	0	35	26	33	33	39	32

	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Casinos	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Real estate	27	30	14	9	0	2	N/A	N/A	N/A	N/A	N/A	N/A
Dealers in precious metals and stones	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Lawyers	15	23	9	8	5	13	N/A	N/A	N/A	N/A	N/A	N/A
Notaries	N/A	N/A	N/A	0	0	0	N/A	N/A	N/A	N/A	N/A	N/A
Accountants & auditors	38	26	19	13	16	13	N/A	N/A	N/A	N/A	N/A	N/A
Other												
	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Lenders	7	1	5	6	3	2	N/A	N/A	N/A	N/A	N/A	N/A
Factoring	N/A	N/A	0	1	0	1	N/A	N/A	N/A	N/A	N/A	N/A
Financial Leasing	0	1	2	0	0	0	N/A	N/A	N/A	N/A	N/A	N/A
Participation in securities issues	1	2	1	2	2	3	N/A	N/A	N/A	N/A	N/A	N/A
Advice and service to the purchase of undertakings	N/A	N/A	1	0	1	0	N/A	N/A	N/A	N/A	N/A	N/A
Money brokers	N/A	1	0	1	1	0	N/A	N/A	N/A	N/A	N/A	N/A
Issuing and administering means of payment	N/A	N/A	N/A	N/A	N/A	1	N/A	N/A	N/A	N/A	N/A	N/A
Investing and administering or managing funds	0	0	6	3	1	1	N/A	N/A	N/A	N/A	N/A	N/A
TOTAL	115	96	68	49	42	48	69	52	50	52	72	65

FI + TCSPs

JERSEY						
Ratio of AML/CFT examinations FI + TCSP						
	2009	2010	2011	2012	2013	2014
Total entities	877	860	849	861	860	870
Total AML/CFT examinations	96	64	61	58	85	77
Ratio	10.9%	7.4%	7.2%	6.7%	9.9%	8.9%

FI + TCSP (excluding managed fund entities)

JERSEY						
Ratio of AML/CFT examinations FI + TCSP (excluding Managed entities)						
	2009	2010	2011	2012	2013	2014
Total entities	584	553	538	547	548	541
Total AML/CFT examinations	96	64	61	58	85	77
Ratio	16.4%	11.6%	11.3%	10.6%	15.5%	14.2%

DNFBPs

JERSEY						
Ratio of AML/CFT examinations to DNFBPs						
	2009	2010	2011	2012	2013	2014
Total entities	314	349	359	390	402	419
Total AML/CFT examinations	136	113	91	76	68	68
Ratio	43.3%	32.4%	25.3%	19.5%	16.9%	16.2%

AML/CFT examinations overall

JERSEY						
Ratio of AML/CFT examinations overall						
	2009	2010	2011	2012	2013	2014
Total entities	1021	1040	1038	1071	1078	1103
Total AML/CFT examinations	184	148	118	101	114	113
Ratio	18.0%	14.2%	11.4%	9.4%	10.6%	10.2%

AML/CFT examinations overall (excluding managed entities)

JERSEY						
Ratio of AML/CFT examinations overall (excluding managed entities)						
	2009	2010	2011	2012	2013	2014
Total entities	728	733	727	757	766	774
Total AML/CFT examinations	184	148	118	101	114	113
Ratio	25.3%	20.2%	16.2%	13.3%	14.9%	14.6%

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors), market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

878. Most financial institutions are adequately regulated and supervised. The Commission has sufficient powers to effectively supervise financial institutions' compliance with AML/CFT requirements. The staff of the Commission appears to be very professional. Supervision is conducted on a risk-sensitive basis, which enables the Commission to prioritise regulatory work and focus on higher-risk entities and situations. In general, this approach appears to be functioning effectively in practice.

879. The Commission is responsible for the on-site examination of both the financial and non-financial sector. Whereas the number of supervised entities has increased, the number of general onsite examinations that have been conducted in the period under review has decreased. This also applies to the number of specific AML/CFT on-site visits conducted for the whole financial and non-financial sector. The figures for the period under review were as follows: 115 (2009), 96 (2010), 68 (2011), 49 (2012) to 42 (2013) with a small increase to 48+ in 2014. The trend in the overall number of AML/CFT examinations shows a decrease between 2009-2014 because of a change in the Commission's supervisory strategy in relation to lawyers, accountants and estate agents. A more focused analysis shows a more stable picture in terms of entities for the financial institutions including TCSPs. The additionally provided information as presented above gives a more detailed overview of the supervisory situation.

880. Looking at the specific AML on-site visits in general, the securities (both funds and investment businesses) and insurance sectors have received very little supervisory attention in terms of on-site examinations.
881. The assessment team considered the supervisory findings of the Commission as a measure of the effectiveness of the AML/CFT supervisory regime in Jersey. The Commission has identified AML/CFT shortcomings in approximately 600 on-site examinations since 2008 that have resulted in AML/CFT findings. Details of these findings are maintained in a database known as 'PEMS'. The assessment focussed on the findings concerning various areas which are specific to or are considered particularly relevant in Jersey, such as the application of simplified due diligence under Article 17 and Article 18 of the Money Laundering Order, the exemptions under Schedule 2 of the Proceeds of Crime Law that provides for nine exemptions from CDD, third party reliance under Article 16 (and 16A) of the Money Laundering Order and the identification of beneficial ownership.
882. Regarding the application of SDD under Article 17 and 18 of the Money Laundering Order, the Commission stated that this is identified as an area of increased focus in the manual for on-site examinations. The PEMS database contains 33 findings that relate to the general application of Article 17 of the Money Laundering Order.
883. No specific findings (nor supervisory activities) have been identified with respect to Case 4 (see Table under Recommendation 5), which provides for the application of simplified CDD where the relevant person is a deposit-taker and the customer is a lawyer. The fact that no shortcomings were identified by the Commission, despite the fact that simplified CDD is permitted even when the lawyer may not be necessarily subject to the same degree of supervision exercised by the Commission, raises concerns. According to the Commission, SDD in this case is used exclusively by clearing banks in respect of Jersey lawyers and therefore the risks are limited. According to a recently conducted survey, this Case 4 was reported being applied by banks in less than 10 cases. Although this make the issue potentially less material, it deserves some supervisory attention that it has not been given so far.
884. No specific findings (nor supervisory activities) have been identified with respect to Case 2, which permits financial institutions to apply SDD in relation to a customer which is an unregulated fund, a so called 'COBO-only fund', or equivalent and where there is little risk of money laundering occurring¹¹⁰. This case includes any service provided by a relevant person to a customer who is (or acts for) such a fund. Insufficient focus appears to have been given to this area. The same survey showed that Case 2 was used around 150 times. Although this makes the issue potentially less material, it deserves some supervisory attention.
885. No specific findings have been identified in relation to Article 18 of the Money Laundering Order. The same survey showed that this concession is applied in less than 1% of the total customer base, which might still be relatively large in absolute numbers. Although this makes the issue potentially less material, it deserves some supervisory attention.
886. Although remedial actions seem to have been required by the Commission and implemented by financial institutions, no pecuniary sanctions have been applied by the Commission regarding deficiencies of Articles 17 and 18 Cases.
887. In relation to the 17 exemptions (those include 9 FI exemptions and 8 DNFBP exemptions related to TCSPs that are qualified as financial institutions under Jersey law) provided under Schedule 2 of the Proceeds of Crime Law, the Jersey authorities explained that since November 2014 the COBO application form requires prospective companies wishing to make use of any

¹¹⁰ A relevant person may be satisfied that there is little risk of money laundering or financing of terrorism occurring where a particular fund is closed-ended, has no liquid market for its units and permits subscriptions and redemptions to come from, and be returned only to, unitholders.

exemption to seek approval from the Commission. The application form is managed by the Company Registry (which forms part of the Commission).

888. The authorities explained that a written procedure was established in November 2014 to facilitate communication between the Company Registry and the Supervision Department of the Commission in relation to those companies proposed to make use of any exemptions. In 2014, the Companies Registry requested information from the Supervision Department in 47 cases. Since November 2014, the Company Registry has requested input on 58 cases.
889. This new written procedure has had a clear positive impact comparing 47 cases of 2014 before November and 58 afterwards. This procedure is an ex-ante judgment to allow for the exemption. There is not much information available that points to specific attention for those exemptions during onsite visits, nor to specific findings by the Commission when this exemption is used by companies (ex post audit). The Commission pointed out that specific attention is given to exemption number 24 (Private Trust Company Business), exemption number 29 (director of a trust company business that acts in the course of employment by a trading company up to maximum 6 companies) and exemption number 34 (nominee company is an investor in a fund that holds a permit of certificate under the Collective Investment Funds Law) during on-site examinations, but no findings were reported.
890. As explained in other parts of the report some of those exemptions are deemed to present a higher risk than low,. In many of the presented Exemptions the reasoning is either that there is no person in Jersey to attach AML/CFT obligations to, which does not always mean low risk, or to avoid duplication of AML/CFT obligations within a group or in a third party relationship. Where the Jersey authorities have chosen to follow an approach with rather extensive exemptions, a more convincing supervisory approach would have been sensible to mitigate the risk of misusing those exemptions from regular CDD. This is even more the case are not proven low risk, related to TCSPs or where those Exemptions go further than agreed other solutions in the FATF like those under Recommendation 9 for third party relations or intra group relations. Although remedial actions seem to have been implemented, no sanctions have been applied by the Commission regarding misuse of Exemptions.
891. As regards third party reliance, at the time of the onsite visit, the PEMS database contained 67 findings in connection with the application of Article 16 of the Money Laundering Order. Most of the findings related to the requirement to undertake a risk assessment, obtain a written assurance and undertake testing and deficiencies in the related procedures. Although remedial actions have been required by the Commission, no pecuniary sanctions have been applied by the Commission regarding breaches of Article 16.
892. Legal persons and legal arrangements. The Commission has undertaken a total of 565 on-site examinations of TCSPs since the regulatory law came into force. Every on-site examination included a review of AML/CFT matters. The on-site examination is the mechanism by which the Commission aims to test the effectiveness of the TCSPs systems and controls of AML/CFT risks by reviewing client files.
893. The Commission indicated that approximately 5,000 client files have been reviewed during on-site examinations of TCSPs. The testing of ownership information of clients / structures includes ensuring that beneficial ownership information is accurate, up-to-date and is advised to the Company Registry as required.
894. The review of client files, amongst other issues, have resulted in 145 specific findings being identified in relation to CDD. These include not having CDD on all beneficiaries of a trust and out of date ID evidence. The Commission has identified a small number of cases with deliberate concealment of ownership, including so called 'dummy settlors'.
895. Sanctions have been applied by the Commission regarding misuse of legal persons and legal arrangements.

896. Money Service Business – The authorities indicated that the exemption for persons carrying out money service business with a turnover below £300,000 was introduced in order to prevent smaller operators from withdrawing the service offered on the basis of the registration and annual fee that would otherwise be charged. Such businesses are required to notify the Commission. Currently 9 notifications (previously 15) have been received from 6 hotels and 3 other companies including a food outlet / bike hire company and a pharmacy. All businesses have been visited by the Commission. Spot checks have not been done but were planned for 2015. Although it is positive that spot checks have been planned, it is also an indication that on-site inspections have not taken place so far. Supervision would need to be undertaken to ensure that risks have been managed and mitigated.
897. At the time of the onsite visit, the Commission had not identified any situations of misuse of this particular exemption hence no remedial actions have been proposed or sanctions applied.
898. The evaluation team identified a bank in relation to which serious concerns, including allegations relating to terrorism financing, had been raised at group level by foreign authorities. Upon becoming aware following a notification from the foreign authorities of these concerns, the Commission further intensified the supervisory oversight of this entity. While it is positively noted that, both some months prior to and immediately after becoming aware of these concerns, the Commission took prompt action to identify any possible shortcomings, the fact that the Commission did not identify these concerns itself earlier, to some extent, calls into question the Commission's supervisory approach. In this particular case, it appears that the Commission placed undue reliance on the (foreign) host supervisor and may not have given sufficient consideration to the ML/FT risks posed by this entity. While the Commission intensified its actions, it also experienced difficulties. It is the view of the evaluation team that in relation to financial institutions posing a higher risk of ML/FT, reliance on foreign supervisors might be less effective. It is therefore positive to note that the Commission established a policy on cross-border supervision in November 2014 which should address this risk.
899. The evaluators noted that one case of non-reporting is before the criminal courts. The evaluators encourage close attention to this issue in supervisory activities and firm prosecutorial action for such breaches.
900. The AML/CFT Handbooks give quite some flexibility when it provides for high level principles and enables relevant persons to determine the measures most appropriate for its circumstances and to implement different measures to those set out in the Guidance Notes, as long as it can demonstrate to the Commission that such measures also achieve compliance with the Money Laundering Order and the AML/CFT Handbooks. This might lead to effectiveness issues when the Commission wants to apply the more heavy sanctions. At the same time it seems not to have been a problem so far when applying 'banning directions' and revoking of licences.

3.6.2 Recommendations and comments

Recommendation 23

901. The scope of the exemptions should be revised to cover all activities covered by the FATF's definition of financial institution.
902. The supervisory strategy should devote appropriate attention to the use of the exemptions under Schedule 2, the use of concessions under Article 18 (SDD) and Money Service Business.
903. The registration requirements, the level of the threshold and associated supervision conducted with regard to the MSBs whose turnover is less than £300,000 should be reviewed to address the identified concerns.

904. The authorities are recommended to ensure that the Commission's existing policy statement on cross-border supervision of banks is effectively implemented, in turn to ensure that the supervision of any Jersey banks with operations off the island is appropriately calibrated to the ML/FT risks assessed, including those posed by the relative equivalence of the host jurisdiction.

Recommendation 17

905. The authorities should monitor the use of the recently added administrative sanctions to the overall package.

Recommendation 29

906. This recommendation is met.

Recommendation 30 (all supervisory authorities)

907. This recommendation is met.

Recommendation 32

908. No recommendations are necessary.

3.6.3 Compliance with Recommendations 23, 29 and 17

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> Administrative fines have recently been added to the range of sanctions available. Its effective use could not be assessed.
R.23	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> Certain exemptions and cases of SDD did not attract sufficient attention in the supervisory approach of the Commission; The £300,000 threshold applied to the MSBs is considered to be high in light of the supervisory activity applied so far to these entities; In one particular case the supervision carried out by the Commission appeared to have been unduly reliant on the supervision carried out by a foreign supervisor.
R.29	C	

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Scope of regulation of DNFBPs

909. Schedule 2 of the Proceeds of Crime Law covers, inter alia, the following activities that are conducted by DNFBPs:

- The business of operating a casino. Article 4 of the Money Laundering Order provides that CDD measures must be applied to any transaction outside a business relationship amounting to not less than €3,000 carried out in the course of operating a casino.
- The business of providing estate agency services for, or on behalf of, third parties concerning the buying or selling of freehold or leasehold property.
- Persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments of cash of at least €15,000. This includes dealers in precious metals and dealers in precious stones.
- Those who, by way of business, provide legal or notarial services to third parties when participating in financial or immovable property transactions concerning: the buying and selling of immovable property or business entities; the managing of client money, securities or other assets; the opening or management of bank, savings or securities accounts; the organisation of contributions necessary for the creation, operation or management of companies; or the creation, operation or management of trusts, companies, or similar structures.
- The business of providing external accountancy services, advice about the tax affairs of another person, audit services, or insolvency services.
- Trust company business, which is defined in Article 2(3) and 2(4) of the Financial Services Law.

910. The DNFBP sector in the Crown Dependency of Jersey is, to some extent, dominated by the activities of TCSPs, although auditors, lawyers, and accountants are also active to varying degrees.

911. According to Schedule 2 of the Proceeds of Crime Law, TCSPs are considered relevant persons carrying on financial business, and are regulated and supervised by the JFSC for prudential reasons.

Exemptions

912. Nineteen activities carried out by TCSPs are not considered to be financial activities, thus exempted from the scope of Part A of Schedule 2 of the Proceeds of Crime Law.

913. Examples of activities which fall outside of the AML/CFT scope are:

Given the low risk activity/not subject to FATF coverage:

- Individual who acts as a director in the course of employment by a trading company;
- Individual who acts as a director in the course of employment by a company that is prudentially supervised by the Commission under the regulatory laws;
- Individual who acts as, or fulfils the function of, a director to six or less companies.

To avoid duplication of CDD requirements:

- Exempted special purpose vehicle: Special purpose vehicle (as defined) where provided with a regulated trust company business service, by a trust company that is registered with, and supervised by the Commission.
 - Rationale: CDD will be conducted by the registered trust company business;
- Private trust company business “PTC”: company established to provide services to a specific trust or group of trusts, or specific foundation or group of foundations, which does not also provide these services to the public, and is administered by a trust company that is registered with, and supervised by, the Commission;
 - Rationale: given that the PTC operates as an integral part of the trust company, CDD will be conducted by the registered trust company business.

914. The assessors concluded that some of the exempted activities, (e.g private trust companies), are high risk activities given that they are generally used by ultra high net worth individuals (UHNWI) that wish their structures to be administered by a separate trust company in order to segregate their family assets from the large number of other trusts that may be administered by a regulated trust company business. PTCs have also been used for structuring purposes in relation to real estate transactions. According to the information provided by the authorities, as of 31 December 2014 there were 887 PTCs administered in Jersey.

915. Jersey authorities have explained that the trust company will have to carry out the CDD on the PTC (i.e. its customer), owners and controllers of the exempted PTC, and the third parties (i.e. trusts and foundations) for whom the PTC is acting. For this reason, PTCs and other similar businesses, are excluded from scope of Schedule 2 of the Proceeds of Crime Law to avoid duplication of AML/CFT obligations.

916. According to the Standards, “only in strictly and justified circumstances, and based on a low risk of ML/FT”, a country may decide not to apply some or the entire AML/CFT obligations to such financial activities. Therefore, the assessment team believes that any financial activity whose low risk has not been proved, cannot be fully exempted from the obligations set out in the Money Laundering Order (e.g. the exemptions to avoid a duplication of AML/CFT measures).

(Applying R.5, 9, 10)

4.1 Customer due diligence and record-keeping (R.12)

4.1.1 Description and analysis

Recommendation 12 (rated PC in the IMF report)

Summary of 2009 factors underlying the rating

917. Recommendation 12 was rated Partially Compliant in the previous assessment of Jersey. The assessment team identified compliance weaknesses in some TCBs. Additionally, since testing of compliance by lawyers, accountants and estate agents had commenced shortly before the on-site visit, the assessment team could not assess its effectiveness. The factors identified in section 3 for financial institutions were also applicable to DNFBPs (where relevant).

Applying Recommendation 5 (c. 12.1)

Casinos (Internet casinos / Land based casinos)

918. The CDD requirements applicable to financial institutions apply in the same manner to casinos, except for the CDD measures applicable to one-off transactions. Article 4 of the Money Laundering Order provides that CDD measures must be applied to any transaction outside a business relationship amounting to not less than €3,000 carried out in the course of operating a casino.

919. At the time of the on-site visit there were no casinos operating in Jersey, although with the recent introduction of the Gambling Law, it is possible to set up and operate a casino on the Island. Remote gambling, including online casinos, can be licensed in Jersey, although at the time of the on-site visit no licence had been issued.

Real estate agents

920. The business of providing estate agency services for, or on behalf of, third parties concerning the buying or selling of freehold or leasehold property are considered relevant persons according to Schedule 2 of the Proceeds of Crime Law.

921. The financial sector requirements for measures to prevent ML and FT were extended to real estate agents in February 2008. This category of relevant person is supervised by the JFSC.

922. The JFSC has published a Handbook for Estate Agents and High Value Dealers that provides guidance on how AML/CFT statutory and regulatory requirements may be met by “estate agents and high value dealers”, which is adapted to reflect the particular needs of this sector.

923. All CDD requirements described under Recommendation 5 are applicable to estate agency services, except Article 17 of the Money Laundering Order (c.5.9). The strengths and weaknesses of that regime are the same from a technical point of view.

Dealers in precious metals and dealers in precious stones

924. Schedule 2 of the Proceeds of Crime Law classifies as relevant persons “Persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments of cash of at least €15,000. This will include dealers in precious metals and dealers in precious stones”.

925. The JFSC has published a Handbook for Estate Agents and High Value Dealers that provides guidance on how AML/CFT statutory and regulatory requirements may be met by “estate agents and high value dealers”, which is adapted to reflect the particular needs of this sector.

926. The authorities indicated that as of December 2014, there were no high value dealers (as defined) in Jersey and none of this category was registered with the Commission. Although the authorities assured that there are no high value dealers that in practice do receive payments in cash of at least €15,000, there are approximately 42 potential high value dealers. Jersey authorities explained, that if any of those 42 potential high value dealers would engage in a transaction of at least €15,000, such business would be under the AML/CFT scope. The assessment team has not met any potential high value dealers during the onsite visit.

Lawyers, notaries and other independent legal professionals and accountants

927. Schedule 2 of the Proceeds of Crime Law

- Those who, by way of business, provide legal or notarial services to third parties when participating in financial or immovable property transactions concerning:
 - the buying and selling of immovable property or business entities;
 - the managing of client money, securities or other assets;
 - the opening or management of bank, savings or securities accounts;
 - the organisation of contributions necessary for the creation, operation or management of companies;
 - or the creation, operation or management of trusts, companies, or similar structures.
- The business of providing external accountancy services, advice about the tax affairs of another person, audit services, or insolvency services.

928. Relevant persons falling within this category are subject to same CDD requirements as financial institutions, described under recommendation 5 (section 3 of this report), except for Article 17 of the Money Laundering Order (c.5.9) (see below).

Trust and company service providers

929. Trust company businesses are prudentially supervised by the JFSC and are defined in Article 2(3) and 2(4) of the Financial Services Law.

930. Article 2(3) of the Financial Services Law states that a person carries on trust company business if the person carries on a business that involves the provision of company administration services or trustee or fiduciary services or services to foundations and, in the course of providing those services, the person provides any of the services specified in Article 2(4).

931. Those services are:

- Acting as a company, partnership or foundation formation agent;
- Acting as or fulfilling the function of, or arranging for another person to act as or fulfil the function of, director or alternate director of a company;
- Acting as or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a partner of a partnership;
- Acting as or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a member of the council of a foundation;
- Acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;
- Providing a registered office or business address for a company, partnership or foundation;
- Providing an accommodation, correspondence or administrative address for a company, partnership, foundation or for any other person;
- Acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust; and
- Acting as or fulfilling or arranging for another person to act as shareholder or unit holder as a nominee for another person.

932. The relevant requirements are described under section 3 of this report. The deficiencies detected, except those relating Article 17 of the Money Laundering Order (c.5.9), are the same as for financial institutions.

Simplified Customer Due Diligence

<i>DNFBPs that may apply Simplified identification</i>	<i>Type of customer acting on behalf of a third party to whom Simplified identification can be applied</i>	<i>Conditions to be met to apply Simplified identification</i>
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	<i>DNFBPs that may apply Simplified identification</i>	<i>Type of customer acting on behalf of a third party to whom Simplified identification can be applied</i>	<i>Conditions to be met to apply Simplified identification</i>
case 1	All DNFBPs	<ul style="list-style-type: none"> i. Deposit taking business, insurance business, funds services business, investment business, registered by the Commission. ii. Holders of certificates under the Collective Investment Funds Law iii. Equivalent business to the above numbers i. and ii. 	Assess the risk and make a written record of why simplified measures are appropriate having regard to the risk of ML/TF inherent in the customer's business and the higher risk of ML or FT should the customer fail to apply CDD and record-keeping requirements.
case 2	All DNFBPs	<ul style="list-style-type: none"> i. Unregulated funds or scheme or arrangement that would be a collective investment scheme but for the fact that there is no offer to the public of units. ii. Equivalent business to the above. iii. Where there is little risk of ML or TF occurring. 	<ul style="list-style-type: none"> i. Written record of why simplified measures are appropriate (in line with case1) ii. For customer that is a relevant person: obtain written assurance that customer has applied identification measures under the Money Laundering Order to third parties. For equivalent business: written assurance that the customer satisfies FATF R.5 and R.6¹¹¹. iii. Obtain written assurance that all necessary information found out will be provided if so requested and evidence of identity will be provided without delay iv. Testing of assurances: e.g. of the policies and procedures, no impediments of secrecy provisions and record keeping
Case 5 case 4	Lawyers and accountants	<ul style="list-style-type: none"> i. Trust company business ii. Equivalent business to the above. iii. Where there is little risk of ML or TF occurring. 	<ul style="list-style-type: none"> i. Written record of why simplified measures are appropriate (in line with case1) ii. For customer that is a relevant person: obtain written assurance that customer has applied identification measures under the Money Laundering Order to third parties. For equivalent business: written assurance that the customer satisfies FATF R.5 and R.6¹¹². iii. Obtain written assurance that all necessary information found out will be provided if so requested and evidence of identity will be provided without delay iv. Testing of assurances: e.g. of the policies and procedures, no impediments of secrecy provisions and record keeping

933. According to Case 5 of the above table, as set out under Article 17(8) of the Money Laundering Order, a lawyer or accountant carrying on business that is described in Paragraphs 1 or 2 (respectively) of Part B of Schedule 2 of the Proceeds of Crime Law Law need not, if that person

¹¹¹ FATF Recommendations 2004.

¹¹² FATF Recommendations 2004.

thinks appropriate and is satisfied by reason of the nature of the relationship that there is little risk of ML or FT occurring, comply with the obligation under Articles 13 and 15 to apply the identification measures specified in Article 3(2)(b) to the third party (or parties) for which its customer is acting where:

- Its customer is carrying on trust company business, and is registered to do so by the Commission; or
- Its customer is carrying on equivalent business to the category described in this paragraph.

934. Article 17(8) can only be applied where there is little risk of money laundering occurring.

935. For case 5, the Handbook for the Legal Sector explains that a firm may demonstrate that, by reason of the nature of the relationship with the client, there is little risk of money laundering or terrorist financing occurring where: (i) the service provided is drafting (including incidental reviewing and advising) of one or more listed documents; and (ii) it considers the extent of the service provided (e.g. fee that is charged). Application of the concession is explained in section 7.13 and it is intended to be used in cases where generic documents are provided for use by trust and company service providers at a nominal cost – that in many other jurisdictions will be available publicly.

936. For case 5, the Handbook for Accountancy Sector explains that a firm may demonstrate that, by reason of the nature of the relationship with the client, there is little risk of money laundering or terrorist financing occurring where: (i) the service is the provision of generic information on Jersey accounting requirements for the preparation of financial statements or generic information on Jersey tax requirements; and (ii) it considers the extent of the service provided (e.g. fee that is charged). Application of the concession is explained in section 7.13 and it is intended to be used in cases where generic information is provided for use by trust and company service providers at a nominal cost – that in many other jurisdictions will be available publicly.

937. Although the FATF Methodology states that DNFBPs may determine the extent of the CDD measures on a risk-sensitive basis depending on the type of customer, business relationship or transaction, the assessment team is of the view that the concession on simplified due diligence measures related to some DNFBPs goes beyond the requirements under the FATF Recommendations.

938. When using Article 17, DNFBPs are not obliged to identify the third parties on whose behalf their client (the T&CSP) acts while applying simplified identification measures, although there is an exception under Article 17(9A) of the Money Laundering Order. According to this provision, where the relevant person considers that the value or financial interest of the third party is significant, it must apply identification measures as described under Article 3(4) to that third party. The AML/CFT Handbooks suggest that for lower risk relationships, the identification of the person having a material interest of over 25% is sufficient.

939. Further, it may be possible to apply identification measures under Article 18 to the T&CSP. Thus, if the conditions to apply Article 18 of the Money Laundering Order are met, lawyers and accountants can avoid the identification of the beneficial owners or controllers of the T&CSP.

940. While this approach is widely used among financial institutions of other jurisdictions, assessors are of the opinion that relevant persons must apply identification measures of all their customers, and in cases of low risk and where simplified due diligence is permissible to adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified, but not fully exempted.

Applying Recommendation 6, 8 and 11 (c. 12.2) – not assessed.

941. Recommendations 6 and 8 were rated Largely Compliant in the last MER conducted by IMF while Recommendation 11 was rated Compliant. According to the rules of procedures of

Moneyval, recommendation rated C or LC in the previous MER which are not key and core recommendations, are not subject to an assessment under Moneyval's 4th Round of Mutual Evaluations.

Applying Recommendation 9 (c. 12.2)

942. The requirements under Recommendation 9 which are applicable to financial institutions are also applicable to DNFBPs. No technical deficiencies were identified under Recommendation 9.

Applying Recommendation 10 (c. 12.2)

943. The record keeping requirements set out under the Money Laundering Order and supplemented by the AML/CFT Handbook apply equally to DNFBPs.

Effectiveness and efficiency

Applying R.5

TCSPs and law firms

944. The representatives of the TCSP sector met on-site demonstrated good knowledge of the inherent risks that the industry is exposed to. All entities met referred to the importance of applying a risk-based approach to determine the type and extent of measures to be applied to different types of customers, products and services. A large percentage of customers, which are mainly corporate, serviced by the TCSP sector come from the UK and other Crown Dependencies.

945. The internal rules and procedures of TCSPs provided to the assessment team generally contained clear customer acceptance policies and procedures, including measures to identify ML/FT risk based on the customer's profile. Policies and procedures examined by the evaluation team appeared to be in line with the legal requirements of Jersey.

946. Representatives from the TCSPs described their processes for monitoring customer transactions according to the risk-rating of the customer. Given that the vast majority of customers are classified as posing a higher risk and are therefore subject to enhanced CDD, monitoring processes are reviewed at a minimum on an annual basis.

947. At the time of the onsite visit, the AML/CFT Handbooks only required the identification of those beneficial owners holding a material interest (25% or less) when the settlor of a corporate trust is a legal person. This issue was also noted during the interviews with the TCSPs industry, where references to the ultimate beneficial owner were not very common.

948. Lawyers and TCSPs met explained the importance of understanding the commercial rationale of the business relationship, which normally involves tax matters. According to the representatives met if the rationale is not comprehensive enough, the business relationship is not initiated. If the transactions are not in line with the stated rationale, the representatives explained that they would end the business relation and file an SAR, if necessary.

949. There are leading offshore law firms established in Jersey. Customers include financial institutions, public companies, trust companies, corporations, fund promoters and high net worth private clients.

950. Some of the law firms met only offer legal services and others also offer fiduciary ones through subsidiary or associated companies which are separately regulated. According to the authorities, normally law firms do not handle assets although there is no legal prohibition, and they can also open pooled accounts.

951. Given that many law firms have as clients trust company businesses, they visit such trust companies in order to verify certain aspects related to AML/CFT measures. Law firms explained that given the high risk of applying simplified identification measures as established under

Article 17(8) of the Money Laundering Order, they limit this application to clients established in Jersey. This explanation was also in line with some statements shared by TCSPs. In general, law firms met seemed to be highly aware of the reputational risk of Jersey, therefore they defined their risk appetite to be very low.

Real estate agents

952. In relation to real estate agents, the evaluation team concluded that the AML/CFT risk of this sector in Jersey is considered to be low, due to the domestic nature of the business.
953. Although Jersey authorities have adopted a reduced version of the Handbook for Regulated Financial Services Business for this sector, interviews with real estate agencies did not demonstrate a good level of understanding of the CDD obligations.
954. Jersey authorities explained that according to a recent survey, the vast majority of real estate agents confirm its business has CDD Policies and Procedures in place. A high percentage of real estate agents do not rely on obliged persons to carry out CDD, being a very minor number of real estate agents that occasionally, rely CDD measures on lawyers.

Auditors and accountants

955. The main activities carried on by auditors and accountants fall within the scope of the Money Laundering Order and the Handbook for the Accountancy Sector requirements. The representatives met on-site demonstrated awareness of their duties as reporting entities. It should be noted that although accountants have been relevant persons since 2008, in general most of the individuals met had previous work experience with implementing AML/CFT Standards.
956. The professionals met demonstrated a good understanding of risk assessments and the necessity of keeping risk assessments up-to-date. In general, accountancy professionals described their risk appetite to be low and stated that although many of their underlying clients are non-residents, they have systems in place to ensure the correct identification and verification of all their customers. The commercial rationale of business relationships is generally related to tax advice issues.
957. Accountancy professionals also service trust company businesses. In such cases, for the identification process, they make use of the concession under Article 16 and/or Article 17(8) of the Money Laundering Order, reliance on third parties and/or simplified identification respectively.
958. Some representatives met stated that the inclusion of non-resident customers, customers not physically present for identification purposes, legal persons that are personal assets holding vehicles and others as provided under Article 15 of the Money Laundering Order, are subject to enhanced CDD but are not automatically considered to pose a higher risk. This calls into question the sector's understanding of certain higher-risk categories.

Applying R.9

959. The large majority of DNFBPs met on-site stated that no reliance is placed on obliged entities for the purpose of fulfilling their CDD obligations. Only one law firm confirmed that reliance is placed on other TCSPs and then only if they are situated in Jersey, the other Crown Dependencies or the United Kingdom. The law firm appeared to have sufficient knowledge of the requirements under Article 16 of the Money Laundering Order, especially the testing procedures required to ensure that CDD information and documentation are made available upon request. It was stated that whenever reliance is placed, representatives from the law firm would conduct periodic visits at the premises of the TCSP being relied on to ensure that their CDD procedures were in line with the requirements in the Money Laundering Order or equivalent legislation.
960. Many representatives (especially from TCSPs and law firms) indicated, however, that a large majority of customers are introduced by other law firms or TCSPs. In these cases, the law firm or TCSP would still conduct CDD measures itself, without placing reliance on third parties. It

appeared that the introducer would assist in the collection of CDD information and documentation and often present the TCSP or law firm with a completed CDD file during the client on-boarding phase. As stated under Recommendation 9, no additional checks appeared to be carried out by the TCSP or law firm on the information and documentation received from the third person. There seemed to be a degree of uncertainty as to whether this procedure constituted reliance on an obliged person, which would require the application of the stringent requirements set out under Article 16 of the Money Laundering Order.

961. Additionally, as explained in the analysis of Recommendation 12 when applying Recommendation 5, the Money Laundering Order sets out eight exemptions where certain DNFBPs are not required to conduct CDD measures. It is the view of the evaluation team that some of these exemptions are not justified and should be subject to the requirements set out under Recommendation 9. In practice, certain DNFBPs are placing reliance on other DNFBPs without applying the requirements under Article 16 of the Money Laundering Order.

Applying R.10

962. According to the rules and procedures of many private sector representatives met, records may be kept by way of original documents, by way of photocopies of original documents, in scanned form and/or in computerised form.
963. Although in line with the international standards, the Money Laundering Order establishes a minimum period of 5 years for record keeping, representatives interviewed assured that according to their internal rules, records are kept for a period of 10 years from the date of the end of a relationship with the client.

4.1.2 Recommendations and comments

964. Authorities should review the eight activities exempted from Schedule 2 of the Proceeds of Crime Law (specially related to TCSPs related services) to ensure that the application of the exemptions from AML/CFT should not be extended to activities whose low risk has not always been proved. In such cases, Jersey authorities should seek other solutions, if appropriate (e.g. consider application of: Article 16 of the Money Laundering Order, partial exemptions, or others).

Applying Recommendation 5

965. Simplified identification measures applied by some DNFBPs go beyond the requirements of the FATF Recommendations.
966. Authorities should ensure that DNFBPs effectively apply the recently amended ECDD measures of the AML/CFT Handbooks according to the degree of risk in each business relationship.
967. Adequate knowledge of AML/CFT obligations by real estate agents was not demonstrated. More awareness-raising initiatives should target the DNFBP sector.
968. Jersey authorities should take adequate measures to ensure that auditors understand the relation between enhanced due diligence and high risk customers.

Applying Recommendation 9

969. Jersey should take appropriate measures, to address the shortcoming identified with respect to the implementation of R. 9 requirements.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12 113	LC	<ul style="list-style-type: none"> Some DNFBP activities are exempted from the application of AML/CFT measures although the risk is not always proved to be low. <p><i>Applying Recommendation 5</i></p> <ul style="list-style-type: none"> Deficiencies related to simplified identification measures described under Recommendation 5 are also applicable to DNFBPs. <p><u>Effectiveness issues:</u></p> <ul style="list-style-type: none"> At the time of the visit, some TCSP limited the scope of identifying the beneficial owner to the person having a material interest only. Awareness of the real estate agencies was not found to be adequate. Awareness of potential high value dealers in respect to their potential AML/CFT obligations was not assessed by the evaluation team. <p><i>Applying Recommendation 9</i></p> <ul style="list-style-type: none"> Deficiencies identified under Recommendation 9 are also applicable to DNFBPs.

4.2 Suspicious transaction reporting (R. 16)

4.2.1 Description and analysis

Recommendation 16 (rated PC in the IMF report)

Summary of 2009 factors underlying the rating

970. The IMF report had concluded that Jersey was Partially Compliant in respect of the implementation of Recommendation 16. The factors outlining the rating were the low level of SAR reporting by those DNFBP sectors that until very recently were not subject to the Money Laundering Order nor supervised for AML/CFT compliance; and the fact that the effective implementation by lawyers, accountants, and estate agents under the new regulatory requirements had not been fully tested by the authorities. The authorities were recommended to continue to conduct on-site monitoring of SAR reporting practices by lawyers, accountants, and estate agents.

Applying Recommendations 13 and 14

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

971. The provisions discussed under R.13 apply in an equal manner to DNFBPs. The obligation of Jersey DNFBPs to file suspicious activities reports derives from the Proceeds of Crime Law,

¹¹³ The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 6, 8 and 11.

Terrorism Law and the Money Laundering Order and are the same as those applicable to all financial institutions in Jersey. All DNFBPs are subject to regulation and supervision by the JFSC for AML/CFT compliance, including compliance with SAR reporting obligations. The statutory and regulatory framework for SAR reporting for DNFBPs is identical to that for financial institutions. Additional “gateways” are set out for professional advisors in Article 35(6) of the Proceeds of Crime Law and Article 35(6) of the Terrorism Law.

Legal Privilege

972. Article 34D(5) of the Proceeds of Crime Law, and Article 21(5) of the Terrorism Law allow for an exemption from the reporting requirement when the person is a professional legal adviser and the information or other matter has come to him or her in circumstances of legal privilege. At the time of the onsite visit, the Proceeds of Crime Law and the Terrorism Law defined “legal privilege” in slightly different way. After the on-site visit, these statutory definitions were deleted (for details see comments raised under R.1 and SR II).¹¹⁴

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

973. There is no reporting threshold applied to the DNFBP sector and suspicious activities where ML or predicate crime is suspected are disclosed to the JFCU.

Making of ML/FT STRs regardless of possible involvement of tax matters (c. 16.1; applying c. 13.4 to DNFBPs)

974. As noted previously, the reporting requirement does not contain any restrictions relating to tax matters and this is also explicitly detailed in the AML/CFT Handbooks.

Reporting through Self-Regulatory Organisations (c.16.2)

975. Jersey has not implemented reporting through self-regulatory organisations; all persons are required to disclose the SARs directly to the FIU.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBPs) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBPs)

976. Aspects related to R.14 are discussed in the previous chapter and apply equally to DNFBPs, including the tipping-off legislation which has been enacted on 4 August 2014.

977. Specific provisions regarding disclosures to professional advisers are set out in Regulation 8 of the Tipping Off- Exceptions Regulations which amends Article 35(6) of the Proceeds of Crime Law and Article 35(6) of the Terrorism Law. Under both laws, disclosure would not amount to an offence:

- a. For the professional legal advisers to disclose information (i) to a client or a client’s representative in connection with giving advice to the client or (ii) to any person for the purpose of actual or contemplated legal proceedings.
- b. For a person who is the client of a professional legal adviser to disclose information or any other matter to that adviser for the purposes mentioned above.
- c. For a person who is a client of an accountant to disclose information or any other matter to that accountant for the purposes of enabling him to provide any of the services mentioned in paragraph 2(1) of Part B of Schedule 2 to the Proceeds of Crime Law.

978. Article 35(6) of the Proceeds of Crime Law does apply where the information or other matter is disclosed with a view to furthering a criminal purpose.

¹¹⁴ The Proceeds of Crime Law (effective 17th March 2015) and the Terrorism law (effective 20th June 2015) no longer define legal privilege and the customary definition applies.

979. Accordingly, a tipping off offence is not committed when disclosures are being made by a firm in respect of SARs or related information or information relating to a criminal investigation, to its lawyer for the purpose of obtaining legal advice or to its accountant for the purpose of enabling the accountant to provide certain services.

980. In addition, a disclosure is protected under the Tipping Off Exceptions Regulations where it meets certain conditions and is:

- a. made as a result of a legal requirement
- b. made with the permission of the JFCU
- c. made by an employee of a person to another employee of the same person
- d. a disclosure within a financial group or network
- e. made to another relevant person
- f. made to the Commission.

981. The Tipping Off Exceptions Regulations do not permit the SAR form or copy of the SAR form to be disclosed, except where done pursuant to a legal requirement or by one employee of a person to another employee of that person within Jersey, nor to disclose the identity of the person who has made the SAR, except where law elsewhere requires this, with the consent of the JFCU or where the recipient is a customs officer, a police officer, any employee of the JFCU or the Commission.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

982. Accountants are subject to reporting requirements. The term “accountant” is defined to include external accountancy services, advice about tax affairs, audit services and insolvency services.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

983. Under Article 34D of the Proceeds of Crime Law, all DNFBPs are required to report to the FIU when they suspect, or have reasonable grounds to suspect, that funds are the proceeds of criminal acts that would constitute a predicate offence for money laundering in Jersey.

Effectiveness and efficiency

Applying Recommendation 13

984. The figures below give an overview of number of reporting entities and reports that they have filed in the period 2010 - 2014:

Number of regulated DNFBPs

	2010	2011	2012	2013	2014
Casinos	0	0	0	0	0
Real estate agents	37	36	35	34	42
Dealers in precious metals and stones	0	0	0	0	0
Lawyers	39	38	41	45	48
Notaries	0	0	1	1	1
Accountants and auditors	72	79	90	94	95
TCSP	140	135	142	135	126
TCSPs natural persons	29	35	38	49	60

SAR`s from DNFBPs

	2010	2011	2012	2013	2014
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Casinos	N/A	N/A	N/A	N/A	N/A
Real estate agents	2	2	5	2	0
Dealers in precious metals and stones	n/a	n/a	n/a	n/a	n/a
Lawyers	36	40	30	42	40
Notaries	n/a	n/a	0	0	0
Accountants and auditors	17	21	27	19	20
TCSP	334	365	472	388	455
Other professionals	23	35	29	36	0

985. The meetings held with the private sector have shown that the large majority have a good understanding of their reporting requirements and that the level of cooperation with the JFCU was positively assessed.

986. The statistics provided above show relatively low levels of SAR reporting by the legal and accountancy profession, while TCSPs are the primary source of SARs as far as DNFBPs are concerned. The levels of reporting have remained rather stable. The comments raised by the assessment team under R. 13 in respect of the performance of the reporting regime and issues of concern are equally valid in the context of the DNFBP's implementation of their reporting obligations. Those relate to the quality of SARs received and the understanding of the FT reporting obligation.

987. When considering the figures above, it should be recalled that no casinos operate in Jersey; hence no SARs are being filed. A limited number of notaries operate in Jersey, and all but one does not provide services related to any property transaction. At the time of the evaluation visit, there was one notary registered with the Commission, and no reports have ever been filed.

988. Jersey has regulated all high value dealers such as car dealers and yacht brokers beside dealers in precious metals and stones. Requirements apply when those businesses accept cash equal to or over €15,000. Paragraph 4, Part B of Schedule 2 to the Proceeds of Crime Law defines "high value dealers". "High value dealer" means persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least €15,000 (or sterling equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked. High value dealers – as defined - are required to register with the JFSC. In practice no entity accepts cash equal to, or over, €15,000 and so none have registered as a high value dealer. No reports have been made to the FIU.

989. As regards real estate agents, whilst natural and legal persons can purchase immovable property it was pointed out that trusts cannot. There is a state level licence system with a *fit & proper* check in place for high net worth residents when they wish to purchase immovable property in Jersey. All movement of funds related to property activities are always carried out by lawyers, not by real estate agents. Such approach is reflected in reporting where only few SARs are disclosed by real estate agents to the FIU. The assessment team remained of the view that the understanding of the reporting requirements by the real estate sector appeared to be rather low.

990. The aspects raised regarding the differences between the definitions of legal privilege in Terrorism Law and in Proceeds of Crime Law, which are wider than the customary law principles, raised concerns that it could lead to situations where part of SARs were not reported. After the on-site visit these statutory definitions were removed by the Proceeds of Crime (Amendment of Law) (Jersey) Regulations 2015 and the Terrorism (Amendment No. 4) (Jersey) Law 2015, and references to "legal privilege" shall now have the same meaning as acquired by the customary law of Jersey. During discussions it was mentioned by representatives of DNFBP sector that legal privilege is concerned only when there is legal advice given.

4.2.2 Recommendations and comments

Applying Recommendation 13

991. Jersey authorities are recommended to continue their efforts to increase the effectiveness of the reporting regime by DNFBPs and the level of awareness of reporting entities, including by undertaking sectoral reviews of the performance of the reporting regime, and developing further sectoral guidance and red flags to support SAR reporting, as appropriate.

Applying Recommendation 14

992. This Recommendation is met.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16¹¹⁵	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> • The performance of the SAR regime is impacted by issues related to the quality of SARs received and level of awareness of reporting entities on the scope of the FT reporting; • Low level of understanding of reporting requirements in the real estate sector.

¹¹⁵ The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 15 and 21.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

Recommendation 33 (rated C in the IMF report)

Summary of 2009 factors underlying the rating

993. Jersey was rated compliant in the previous IMF assessment, no shortcomings were identified.

5.1.1 Description and analysis

Legal framework

994. Jersey laws allow for the incorporation and/or registration of the following types of legal entities: private companies, public companies, foundations and limited liability partnerships, separate limited partnerships, incorporated limited partnerships and incorporated associations.

Measures to prevent unlawful use of legal persons (c. 33.1)

995. The following table attempts to summarise the information which is available at the Registry or registered office for the different types of legal persons :

	Companies	Separate Limited partnerships	Incorporated limited partnerships	LLPs	Foundations	Limited partnerships	Incorporated associations
Number as of 31.12.2014	32,717	56	18	27	250	1,232	243
Companies Registry							Judicial Greffe
Registration of entity name	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)
Registration of:	Yes (private) ¹¹⁶	Yes (private)	Yes (private)	Yes (private)	No	Yes (private)	Yes
(i) nature and							
(ii) principal place of business registered	Yes (public) ¹¹⁷	Yes (Public)	Yes (Public)	No	No	Yes (Public)	No
Registration of address of the registered office in Jersey	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public) ¹¹⁸	Yes (public)	N/A ¹¹⁹
Registration of name and address of registered agent	Yes (private) ¹²⁰	Yes (private)	Yes (private)	Yes (private)	Yes (public)	Yes (private)	N/A
Registration of basic regulating powers (articles of incorporation, partnership agreement, foundation rules)	Yes (public)	No	No	No	No	No	Yes
Registration of name and address of directors (general partners, councillors)	Yes (public & Private) ¹²¹	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public) ¹²²

¹¹⁶ In respect of the nature of the business, this information must be submitted on incorporation and is contained in the relevant application forms (C2a), (C2b), SLP2, ILP2, LLP2 and LP2.

¹¹⁷ In respect of the principal place of business, Article 4(2)(e) of the Companies (Jersey) Law, 1991 requires the Memorandum of Association (a public document) to contain either, the name & address of the registered or principal office of each subscriber which is a person other than a natural person. Article 4(3)(c) of the Separate Limited Partnerships (Jersey) Law 2011 and Incorporated Limited Partnerships (Jersey) Law 2011 requires each general partner that is a body corporate to provide its proposed or principal office address.

¹¹⁸ Referred to as Business Address in the Foundations (Jersey) Law

¹¹⁹ No requirement for a registered office under the legislation

¹²⁰ In respect of the registered agent the information is provided on the relevant application forms (C2a), (C2b), SLP2, ILP2, LLP2, LP2 and F2

	Companies	Separate Limited partnerships	Incorporated limited partnerships	LLPs	Foundations	Limited partnerships	Incorporated associations
Corporate directors or equivalent permissible	Yes ¹²³ (public)	Yes	Yes	Yes	No	Yes	No
Obligation to notify changes regarding all registration details	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)	Yes (public)
Obligation to file annual validation (accuracy of registered information and compliance declaration)	Yes	No	No	Yes	No	No	No
At registered office							N/A ¹²⁴
Information on shareholders or equivalent to be kept at registered office	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Information on number of shares held by each shareholder/member and categories of shares to be kept at registered office	Yes	Yes	Yes	Yes	No	Yes	N/A
Information on shareholders or equivalent open to public	Yes	Yes	Yes	Yes	No	Yes	N/A
Mandatory audit	Public companies Yes but private companies No.	No	No	No	No	No	N/A

Type of legal entity	Information submitted and entered in the registry	Obligation to notify subsequent changes	Sanctions for non compliance notification of changes	Conditions to access the information
Companies	<ul style="list-style-type: none"> Name of Legal Entity Entity Number (if any) Date of Incorporation Current Status (active, etc.) Principal Address of Business Registered Agent Information (Jersey does not have the concept of Registered Agent; all legal entities are required to have a registered office address in Jersey therefore in circumstances where the beneficial owner is a non Jersey resident individual the registered office must be provided by a regulated TCSP). Officer/Director Information 	<p>Special resolutions (“SRs”) passed by a company must be sent to the registrar within 21 days of the resolution being passed (Article 100).</p> <p>SRs must be passed in respect of the following (all special resolutions are public documents):</p> <p>a) Article 14 – change of name</p>	<p>Guilty of an offence for failure to:</p> <p>a) Inform of a change of name (Article 14(4)) – Level 3 fine and daily default fine at a level 2.</p>	<p>Article 202 provides the vires for inspection and production of records kept by the registrar. The conditions to access the information are as follows¹²⁵:</p> <p>a) Article 14 – no constraints to view the data online but a fee is charged for a print out (£4) unless the search is conducted on the public computer at the Commission in which case there is no charge.</p>

¹²¹ In respect of Companies this information is public regarding public companies, for private companies this information is contained in the relevant application forms (forms (C2a) and (C2b)).

¹²² Names of those authorised to represent the association registered

¹²³ Directors details may be obtained on various public documents that have been signed and filed such as special resolutions, annual returns and statement of solvency's

¹²⁴ No requirement for a registered office under the legislation

¹²⁵ See also Article 201 - the Commission may require the payment to it of published fees in respect of the performance by the registrar of his or her functions under the Companies Law or a charge for the provision by the registrar of any service, advice or assistance.

Type of legal entity	Information submitted and entered in the registry	Obligation to notify subsequent changes	Sanctions for non compliance notification of changes	Conditions to access the information
	<p>(public companies only - a statement shall provide particulars with respect to each director in accordance with Article 7 of the Companies Law)</p> <ul style="list-style-type: none"> • Shareholder/Member Information • Application/Certification of Formation • Annual/Biennial Reports (public companies only) • Shareholder Register (Article 71 of the Companies Law requires the register to be updated on the 1 January of each year with the name and address of registered shareholders) • Register of Charges (intangible assets only) • Historical Document (example: past annual filings) • Memorandum • Articles of Incorporation <p>The Memorandum must include the following:</p> <ul style="list-style-type: none"> • The name of the company; • Whether it is a public or private company; • Whether it is a par value company, a no par value company or a guarantee company; • The full name and address of each subscriber. • Regulating powers of the company 	<p>b) Article 16 – change of status of public company</p> <p>c) Article 17 – change of status of a private company¹²⁶.</p> <p>d) Article 127FA(3)(iii) – approval of demergers – the SR must specify any changes to its memorandum and articles that are to take effect on a merger and state the names and addresses of the persons who are proposed to be the directors after the merger.(note also requirements to notify of change in company's memorandum and articles in respect of the merged survivor company (Article 127FM).</p> <p>Notice to be given within 14 days to the registrar:</p> <p>e) Article 44(2) - A company shall give notice to the registrar of the place where its register of members is kept, and of any change of that place.</p>	<p>b) Article 16(5) - Company failing to comply with condition of a direction, or to deliver to registrar copy of notice of direction of Commission or of withdrawal or amendment of condition: Level 3 fine and a daily default fine at a Level 2</p> <p>c) Article 17(5) -Private company failing to give written notice to registrar of increase of membership beyond 30: Level 3 fine and a daily default fine at a Level 2</p> <p>Please note that Article 17(8) -Company failing to deliver to registrar copy of direction by Commission modifying Article 17(2) in its application to the company: Level 3 fine and a daily default fine at a Level 2</p> <p>d) Article 100(5); level 3 fine is imposed on a company failing to include copy of the resolution to which Article 100 applies with memorandum or articles; failing to forward copy to member on request.</p> <p>e) Article 44(4): Company failing to give notice to registrar as to place where register of members is kept: Level 4 and daily default fine at a Level 2</p>	<p>b) Article 16 – as above.</p> <p>c) Article 17(5) and (8) – as above.</p> <p>d) Article 11 – as above.</p> <p>e) Article 44 – as above</p>

¹²⁶ Where a company alters its memorandum as mentioned per Article 16 or 17(1) the registrar shall, upon delivery to him or her of a copy of the special resolution altering the memorandum, issue under Article 9 a certificate of incorporation which is appropriate to the altered status – see Article 17B.

Type of legal entity	Information submitted and entered in the registry	Obligation to notify subsequent changes	Sanctions for non compliance notification of changes	Conditions to access the information
		<p>f) Article 54(1) – a public company must deliver to the registrar within one month of admitting a member or allotting shares with rights a statement containing particulars of those rights.</p> <p>g) Article 67(5) - The company may change its registered office from time to time by giving notice to the registrar.</p>	<p>f) Article 54(5) - Company failing to deliver to registrar statement or notice required by Article 54 (particulars of special rights of members): Level 3 and daily default fine at a Level 2</p> <p>g) Article 67(9) - Company failing to comply with requirements as to registered office: Level 3 fine</p>	<p>f) Article 54 – accessible online for a small fee or free by using the registry standalone computer.</p> <p>g) Article 67 – same constraints applied as to Article 14 above.</p>
LLP	<p>An application for registration is made in the form of a declaration which includes the name of the persons by whom the application is made, the proposed name of the limited liability partnership, the intended address of the registered office, the name and address of each person who is to be a partner indicating which is to be a designated partner (Article 16 of the LLP Law). <u>The declaration and certificate are publicly available.</u></p> <p>Pursuant to Article 38 of the LLP Law, any person may inspect any document delivered to the registrar and kept by the registrar and may obtain a copy of any certificate issued by the registrar under the LLP Law or part of any such document.</p>	<p>Article 8(2) – a change of address shall not take effect until registration.</p> <p>Article 17(1) - within 28 days after any change in the information stated in the declaration, there shall be delivered to the registrar a statement signed by the designated partner specifying the nature of the change.</p>	<p>Failure to inform of Change of address or deliver to the registrar a change of information in the declaration shall result in a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues (Article 43) of the LLP Law.</p>	<p>Article 38 of the LLP Law provides that any person may inspect any document delivered to the registrar and kept by the registrar and obtain a copy of any certificate issued by the registrar.</p> <p>No fee is charged for each copy of a document or other record provided by the registrar pursuant to an application under Article 38 of the LLP Law and viewed without printing from a terminal within the Registry.</p> <p>A fee of £4 is charged for each copy of a document or other record provided by the registrar pursuant to an application under Article 38 of the LLP Law via the Registry's online search facility.</p>
ILP/SLP	<p>In accordance with Article 4 of the SLP Law, a declaration must be submitted to the registrar and this shall include: the name, the intended address, the full name and address of each limited partner or the place where it is incorporated and its proposed registered or principal office, the term (if any). <u>The declaration and certificate issued by the registrar are publicly available.</u></p>	<p>ILP Law/SLP Law: Article 5(1); If change is made in any of the information contained in the declaration (other than in the registered office of the partnership), a statement signed by a general partner, specifying the nature of the change, shall within 21 days of the date of the change be delivered to the</p>	<p>ILP Law/SLP Law: Article 5(4) - If default is made each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.</p> <p>Breach of Article 8(4) ILP Law/SLP Law; each of the</p>	<p>Article 29 of the ILP Law/Article 36 of the SLP Law provide that a person may inspect a document delivered to the registrar and kept by the registrar.</p>

Type of legal entity	Information submitted and entered in the registry	Obligation to notify subsequent changes	Sanctions for non compliance of notification of changes	Conditions to access the information
	<p>Pursuant to Article 29 of the ILP Law and Article 36 of the SLP Law, a person may inspect a document delivered to the registrar and may require a certificate of the registration of a declaration or a copy certified of any other document or part of any other document delivered to the registrar under the applicable Law.</p>	<p>registrar.</p> <p>Article 8(4) ILP Law/SLP Law – a change of address shall not take effect until registration.</p>	<p>general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.</p>	<p>ILP Law: No fee is applied for a copy of a document or other record provided by the registrar pursuant to an application under Article 29 of the ILP Law and viewed without printing from a terminal within the Registry. A £4 fee is administered for each copy of a document or other record provided by the registrar pursuant to an application under Article 29 of the ILP Law via the Registry's online search facility.</p> <p>SLP: as for ILP above.</p>
LP	<p>The registrar shall not issue a certificate unless a declaration is signed by each person who, on formation, is to be a general partner. <u>The declaration and certificate issued by the registrar are publically available.</u></p> <p>In accordance with Article 4 of the LP Law, the declaration must include; the name, the intended address of the registered office, the full name and address of each general partner or the place where it is incorporated and its registered or principal office, the term (if any) .</p> <p>Pursuant to Article 32 of the LP Law, a person may inspect a document delivered to the registrar under the LP Law and may require a certificate of the registration of a declaration or a copy certified of any other document or part of any other document delivered to the registrar under the LP Law.</p>	<p>Change of address shall not take effect until registered (Article 8(2) LP Law)</p> <p>Under Article 5 of the LP Law, if any change is made or occurs in any of the particulars delivered in the declaration (other than a change in the registered office of the partnership), the nature of the change must be notified to the registrar within 21 days.</p>	<p>Failure to report a change of address will result in each of the general partners being guilty of an offence and liable to a fine not exceeding level 2 on the standard scale and in the case of a continuing offence to a further fine not exceeding level 1 on the standard scale for each day on which the offence so continues (Article 8(6) of the LP Law).</p>	<p>Article 32 of the LP Law provides that a person may inspect a document delivered to the registrar and kept by the registrar.</p> <p>No fee is administered for a copy of a document or other record provided by the registrar pursuant to an application under Article 32 of the LP Law and viewed without printing from a terminal within the Registry.</p> <p>A £4 fee is applied for each copy of a document or other record provided by the registrar pursuant to an application under Article 32 of the LP Law via the Registry's</p>

Type of legal entity	Information submitted and entered in the registry	Obligation to notify subsequent changes	Sanctions for non compliance notification of changes	Conditions to access the information
				online search facility.
Foundations	<p>An application to incorporate a foundation must be accompanied by a copy of the proposed charter. The charter must contain certain information such as:</p> <ul style="list-style-type: none"> the name of the foundation, its objects, names and addresses of the first members of the council of the foundation, and details of any initial endowment of the foundation. <p><u>The charter and register are publicly available.</u></p>	<p>Except in respect of changes to the names and addresses of the first council members (see Article 6(2) of the Foundations Law), a foundation must notify the registrar of any amendment to the charter (excluding subsequent changes to members of the council). The amended charter only takes effect when the registrar enters the charter in the register and dates the entry (Article 38(4) Foundations Law).</p> <p>Pursuant to Article 35 of the Foundations Law, a foundation must include its name and business address in its written communications, including those transmitted by electronic means.</p>	<p>All documents must be kept at the business address of the foundation. Failure shall result in a level 3 fine on the standard scale (Article 36 of the Foundations Law)</p> <p>The penalty for non compliance is a level 3 fine on the standard scale.</p>	<p>Article 40 of the Foundations Law provides that a person may inspect a document delivered to the registrar and kept by the registrar.</p> <p>No fee is administered for each copy of a document or other record provided by the registrar pursuant to an application under Article 40 of the Foundations Law and viewed without printing from a terminal within the Registry.</p> <p>A £4 fee is administered for each copy of a document or other record provided by the registrar pursuant to an application under Article 40 of the Foundations Law via the Registry's online search facility.</p>
Incorporated Associations	<p>Incorporated by an Act of the Royal Court pursuant to the Loi (1862) and recorded in a register held by the Judicial Greffe. The Royal Court has to approve the "rules" (i.e. constitution) of the association and any changes thereto. <u>The constitution (and any changes thereto) are filed with the Judicial Greffe and are available to the public for inspection.</u></p>	<p>Obliged under Article 5 of the Loi (1862) to notify the Judicial Greffe upon a change to the constitution or change of the name of the person charged to represent the association.</p>	<p>Article 5 of the Loi (1862) states that a failure to notify the Judicial Greffe makes the association liable to a fine of 50p per day for as long as it remains in breach of the notification requirement.</p>	<p>Information held as a matter of public record.</p>
Trusts	<p>Limited information is held by the Companies Registry in respect of Trusts.</p> <p>Trust and company services providers are required by the Money Laundering Order to maintain up-to-date and accurate information on the beneficial ownership and control on those for whom they act. Save for legally privileged documentation (unless such privileged documentation is held with the intention of furthering a criminal</p>	N/A	N/A	N/A

Type of legal entity	Information submitted and entered in the registry	Obligation to notify subsequent changes	Sanctions for non compliance notification of changes	Conditions to access the information
	<p>purpose), all the information held in the Island is available to the Commission, tax authorities and law enforcement agencies upon request.</p> <p>Please note that the Company Registry will collect some information concerning trusts on incorporation and this includes but is not limited to:</p> <p>Name of the Trust, Name of Trustees and co-Trustee, Settlor (Name, occupation, DOB, Principal residential address, Protector, UBO/controller and all beneficiaries).</p> <p>Where a company is relying on the private trust company exemption, this is disclosed on application to Companies Registry and notified to the trust company business division of the Commission. Thereafter, the annual fee registration process of the TCSP includes confirmation of PTCs under administration and a continuous obligation to inform the Commission of changes in registered address is maintained.</p>			

996. In broad terms the following systems operate in Jersey to obtain, maintain and verify beneficial ownership information for companies, foundations and partnerships, namely:

- Requirements that are placed on companies, foundations and partnerships to keep information on shareholders, beneficiaries and partner owners at their registered offices and to file annual returns.
- Requirements to obtain the Commissions consent prior to issuing shares or admitting members.

997. The Commission collects information under the Control of Borrowing Order (COBO) on the ultimate beneficial owners of companies and partnerships at the time of registration and that information is kept accurate and up to date: by the Commission in cases where those companies are owned by Jersey residents; or by trust and company service providers, on the basis of the Money laundering Order.

998. The information is available at either:

- the registered office of the company, foundation or partnership (being limited partnerships, limited liability partnerships, separate limited partnerships or incorporated limited partnerships);
- the premises of the Commission;
- the office of the TCSP.

999. The World Bank in their 2011 Report under the Stolen Assets Recovery Initiative (StAR) entitled *“The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It”* recognised at chapter 4.1 that the “The Jersey Model” should be upheld as an example of how access to beneficial ownership and control information can be implemented in a jurisdiction. Jersey’s combination of a central register of the UBO with a high level of

vetting/evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency.

Requirements for Registration (Companies Law, Foundations Law, Limited Partnerships Law)

1000. Under Articles 41 and 83 of the Companies Law, every company must maintain a register of its registered shareholders, directors and secretary at its registered office (which must be in Jersey). These registers must be available for inspection by a company's shareholders and by the Registrar. The register of shareholders (but not the register of directors) may also be inspected by a member of the public. If a company fails to keep a register:

- In the case of a register of members, it shall be guilty of an offence and may be punished by a level 4 fine (£5,000) and daily default set at level 2 (£500).
- In the case of a register of directors it shall be guilty of an offence and may be punished by a level 3 fine (£2,000) and daily default set at level 2 (£500).

1001. Since 2009 it is possible to set up foundations under Jersey law. Under Article 36 of the Foundations Law, a foundation must keep at its business address (the business address of the qualified member of its council) a register to show the names and addresses of its council members, the name and address of the guardian, records to show and explain its transactions (which will include any amounts paid to beneficiaries), and a register of the names and addresses of those who have endowed the foundation. Failure to comply with this requirement is an offence and may be punished by a fine of level 3 on the standard scale (£2,000).

1002. Under Article 8 of the Limited Partnerships Law, a limited partnership shall keep at its registered office the full name and address of each limited partner who is an individual, or in the case of a body corporate, its full name and place where it is incorporated, and its registered or principal office. The same applies to a SLP and ILP. It is an offence to fail to comply with this requirement punishable by:

- In the case of a limited partnership - a fine not exceeding level 2 on the standard scale (£500) and, in the case of a continuing offence to a further fine not exceeding level 1 (£50) on the standard scale for each day on which the offence so continues.
- In the case of a SLP and ILP – a fine of level 4 on the standard scale (£5,000).

1003. The use of financial penalties is one sanction available to the Commission/Registrar where information provision requirements and notifications are breached. Examples of financial penalties applied are listed in Table A. Ultimately, the Registrar has the power of strike off (see Article 205 of the Companies Law) and this is set out in Table B below.

Table A

Companies (including cell companies (ICCs, PCCs, PCs and ICs))	2011	2012	2013	2014
No. of late special resolution that incurred late filing fee	383	1102 ¹²⁷	332	579
No. of late company Annual Returns that incurred late filing fee ¹²⁸	1402	1145	1189	919
No. of public accounts that incurred late filing fee	190	134	168	106

Table B

¹²⁷ 612 of those late were from 1 group structure

¹²⁸ Statistics include SLPs/ILPs and LPs

Companies	2011	2012	2013	2014
Total no of Incorporations	2,520	2,373	2,517	2,771
Total No. of companies dissolved	2,563	2,378	2,195	2,535
Total No. of company strike offs	683	449	544	501

1004. In addition non statutory measures are used to address potential AML/CFT risks identified on review of applications for incorporation. These measures are set out below, including with an overview on their application:

Year	Category	Number of Applications	Outcome	
2014	Higher AML/CFT risk factors	20 ¹²⁹	Withdrawn after first stage minded to refuse stage of Decision Making Process	0
			Withdrawn by applicant	5
			Incorporated with Conditions/Confirmation & Undertaking	5
			Incorporated	10
2013	Higher AML/CFT risk factors	23	Withdrawn after first stage minded to refuse stage of Decision Making Process	5
			Withdrawn by applicant	7
			Incorporated with Conditions/Confirmation & Undertaking	1
			Incorporated	10
2012	Higher AML/CFT risk factors	12	Withdrawn after first stage minded to refuse stage of Decision Making Process	0
			Withdrawn by applicant	1
			Incorporated with Conditions/Confirmation & Undertaking	0
			Incorporated	11
2011	Higher AML/CFT risk factors	9	Withdrawn after first stage minded to refuse stage of Decision Making Process	0
			Withdrawn by applicant	4
			Incorporated with Conditions/Confirmation & Undertaking	0
			Incorporated	5

1005. Under Article 8 of the Limited Liability Partnerships Law, a LLP shall keep at its registered office a list showing the name and address of each partner. Failure to inform of change of address or deliver to the registrar a change of information in the declaration shall result in a fine not exceeding level 4.

¹²⁹ This includes two proposed applications where preliminary discussions led the Commission to advise the relevant TCSP that an application featuring the disclosed risk factors presented unacceptable potential reputational risk to the Island. These have been included as a withdrawn by applicant outcome.

1006. Companies are permitted to have a corporate director that: (i) is a company registered and supervised by the Commission to provide director services pursuant to the Financial Services Law; and (ii) does not itself have any corporate directors. Otherwise, corporate directors are not permitted. “Nominee” directors are not recognised in legislation.
1007. Companies need to keep their register of shareholders up to date at all times. Those companies need to provide details to the Registrar on an annual basis to update the publically available register. In accordance with Article 45 of the Companies Law, any person on payment of a fee to the company may inspect the register of members.
1008. In the case of a company that is carrying on regulated business, it is the Commission’s policy that all directors should be natural persons. This policy position is set out in the Commission’s three licencing policies for: (i) banking business; (ii) insurance business and (iii) financial service business that require a registration under the Financial Services Law.

Requirements to obtain the Commissions consent prior to issuing shares or admitting members

1009. By virtue of Article 2 of the Control of Borrowing Order, a body incorporated under the law of Jersey shall not, without the consent of the Commission, issue shares. By virtue of Articles 10 and 11, a person shall not create any interest in a partnership (all registered forms) without the consent of the Commission.
1010. Before giving consent under Article 2 of the Control of Borrowing Order to a company to issue securities, or under Articles 10 and 11 to admit partners to a partnership, the Commission requires upfront disclosure of the name, address, date of birth, and occupation of each of the individuals (ultimate beneficial owners) who are to have a 10% interest in the company or partnership immediately following registration under the Companies Law or partnerships laws (except in the case of an owner that is listed on a regulated market – which satisfies transparency requirements - as defined by Article 2(5) Money Laundering Order). In a case where a trustee is to hold an interest, then information will be collected on the individuals who have settled funds into that trust. Information on ultimate beneficial owners is held privately by the Commission and is not made available to the public.
1011. Under Article 12 of the Control of Borrowing Order, each consent is conditioned such that where any other shareholder or partner is to take a 25% or more interest in the partnership subsequent to registration, it must request prior approval from the Commission before that person can acquire such an interest (which may not always include all controlling parties). The exception to this (generally) is where the company or partnership is provided with an administration service that is specified in Article 2(4) of the Financial Services Law by a person that is registered under that law, e.g. acting as a director or partner or providing a registered office address. This is because such a person will be
- A relevant person and required to apply preventive measures under the Money Laundering Order, including obtaining, verifying and retaining records on directors, shareholders and partners; and
 - Supervised for compliance with those AML/CFT requirements under the Supervisory Bodies Law and Financial Services Law – with the Commission having access to information on directors, shareholders and partners in a timely fashion.
1012. The definition that is used in the guidance published under COBO for the ultimate beneficial owners was not fully in line with the definition of the Money Laundering Order and the FATF recommendations where it focuses on material interest of in general 25%, but does not focus on the element of indirect control.
1013. The Jersey authorities stated that the COBO has the effect of preventing a legal person issuing securities above 10% until the Commission has given its consent. In that process the Commission

considers information on beneficial ownership in the application form. The previous guidance to this form indeed speaks of 'looking to trace ownership back to an individual, in practice this is sometimes not practical or possible'. It also states though that 'the current position is that, at the point of incorporation of a Jersey company up front disclosure of the ultimate beneficial owners holding a 10% or more interest is required'. The element of indirect control without material interest was therefore not fully clear in the previous guidance. Further it is clear that for acquiring interests below 10% or other forms of control, there is no upfront disclosure required.

1014. The guidance to the form has been changed as of 24 March 2015. Where paragraph 8.3 still speaks of the 'the current position is that, at the point of incorporation of a Jersey company, up front disclosure of UBOs holding a 10% or more interest is required', para 8.4 states that details of the beneficial owners and controllers must also be completed in this section. It then refers to the amended Handbook for Regulated Financial Services Business for legal arrangements (section 4.4.1 for trusts and 4.4.3 for limited partnerships) and for legal persons (section 4.5.1 for companies and 4.5.5 for partnerships) which now address control of a company through other means.
1015. According to the Commission it's their policy to place strict limitations on who may apply to incorporate a company. The Commission will give consent under the Control of Borrowing Order only where an application is received from:
 - A trust and company services provider that is registered with the Commission to form companies or partnerships under the Financial Services Law; or
 - A Jersey resident individual. In this case, the individual must present evidence of identity to the Commission at the time of application (usually a passport and utility bill less than three months old).
1016. Information collected on beneficial ownership is subject to a number of independent checks, e.g. consolidated list of persons subject to sanctions legislation in Jersey, WorldCheck, internet and regulatory databases maintained by the Commission. As part of its work, the Commission also considers whether a relevant person that is the trust and company service provider has properly applied CDD measures under the Money Laundering Order, e.g. has it identified whether the proposed beneficial owner of a company is a PEP.
1017. Pursuant to the COBO, the Companies Law, the Financial Services Law and the Sound Business Practice Policy, the Commission will also consider the jurisdictional and activity risk that may be present pre- and post incorporation, and may withhold consent under the Control of Borrowing Order when the activities of a company or partnership are considered to be 'sensitive' or pose higher risk factors.
1018. Reserved companies (with several similar characteristics to shelf companies), may be formed under certain conditions of the COBO and the Companies Law. This facility is available only to TCSPs registered pursuant to the Financial Services Law. Such a TCSP may, upon successful determination of an application to the Commission, be granted authority to incorporate one or more 'reserved' companies. These inactive companies are owned by the trust and company services provider until such time as they are transferred into the beneficial ownership of their client. Within 28 days of this change of ownership, the trust and company services provider must provide the Commission with details of the new beneficial owner and confirmation that it has undertaken CDD on the beneficial owner. It must also advise the Commission what the activity of the company is to be. At such time, the same checks outlined above that are applied prior to registration of a company are applied to a 'reserve' company post notification.
1019. The Commission 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 amended guidance to the application form is also applicable to PCCs.

1020. The Jersey authorities state that as a result of Article 127YD(1)(b) of the Companies Law, a cell of an incorporated cell company is a company and treated as such for the purpose of the COBO.

1021. The COBO does not apply to foundations, customary law partnerships or incorporated associations. Where ML/FT risks for foundations and partnerships are further mitigated by measures in the Foundations Law and partnership law, Financial Services Law, Money Laundering Order (described below) and Control of Housing and Work (Jersey) Law 2012, this seems not to be the case for the incorporated associations.

Requirements to have a registered office in Jersey.

1022. While providing such office services is a regulated activity, it is subject to the AML/CFT requirements.

Financial Services Law

1023. Where a person carries on a business in or from within Jersey that involves the provision of company administration services, fiduciary services, or services to foundations and, in the course of providing those services, a service which is specified in Article 2(4) of the Financial Services Law, the person is required to register with the Commission (as a trust and company services provider). Services listed in Article 2(4) include:

- Acting as a company, partnership or foundation formation agent;
- Acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, director or alternate director of a company;
- Acting as, or fulfilling the function of or arranging for another person to act as or fulfil the function of, a partner of a partnership;
- Acting as, or fulfilling the function of or arranging for another person to act as or fulfil the function of, a member of the council of a foundation;
- Acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;
- Providing a registered office or business address for a company, a partnership or a foundation;
- Providing an accommodation, correspondence or administrative address for a company, partnership, foundation or for any other person;
- Acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust; and
- Acting as or fulfilling or arranging for another person to act as shareholder or unit holder as a nominee for another person.

1024. In order to register such a person, the Commission must be satisfied that the individual or, in the case of a legal person or partnership, the principal persons are “fit and proper” (in terms of integrity, competence and solvency). The person will be required to comply with Codes of Practice for Trust Company Business. In particular, a trust and company services provider that acts as, or arranges for others to act as, a director, partner, or council member must understand its duties under relevant laws and comply with the requirements of the relevant laws, e.g. the Companies Law; and demonstrate that reasonable care has been taken to have knowledge of the

activities of the company, partnership or foundation for which it acts for or arranges for another to act and any material changes thereto.

1025. At the very least, every company (including any cell thereof) and partnership (all forms) must have a registered office in Jersey. In the case of a foundation, one or more of the members of the council must be a qualified member (a category of persons that is subject to regulation and supervision by the Commission).
1026. Section 2.2 of the trust company business section of the Handbook for Regulated Financial Services Business deals with the provision of registered office services.
1027. The nature of the service of providing only a registered office address is such that a relevant person is unlikely to have any oversight of, or control over, its customer's activities (in the way that it would if it also provided one or more directors or partners and/ or provided full administration services). The passive nature of this activity increases the risk that a company or partnership may be used to launder money or to finance terrorism by its beneficial owners..
1028. The effect of this additional risk according to the Jersey authorities will be to require a relevant person to request more information on its customer, and on the activities of the company or partnership to which it is to provide a registered office service, for the purpose of countering ML and FT than is strictly necessary to provide a registered office address.
1029. The Handbook for the Regulated Financial Services Business clarifies under section 13.2.2 paragraph 16 that:
- In the case of a relevant person that provides **only** limited services to a legal arrangement or legal person, a relevant person may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it collects (at the time that a limited service is first provided and then on an ongoing basis thereafter) information on activities by reference to:*
- copies of minutes of directors' and members' meetings that must be kept by a company (including, in the case of a protected cell company, copies of minutes of directors' and members' meetings of the cell company and each of its cells) under Part 15 of the Companies Law (or equivalent for other legal persons or legal arrangements); and
 - copies of accounts that must be prepared by the directors of a company (including, in the case of a protected cell company, copies of accounts that must be prepared by the directors of the cell company and each of its cells) under Part 16 of the Companies Law (or equivalent for other legal persons or legal arrangements); or
 - where accounts are not required to be prepared, underlying financial records that are maintained by the directors of that company (or equivalent for other legal persons or legal arrangement).
1030. Further, Article 2(3) of the Financial Services Law says that a person carries on trust company business if the person carries on a business that involves the provision of company administration services or trustee or fiduciary services or services to foundations and, in the course of providing those services, the person acts as, or fulfils or arranges for another person to act as, shareholder or unit-holder as a nominee for another person. The effect of this is to regulate any person who, by way of business, acts as a nominee shareholder to a Jersey (or foreign) company.
1031. Article 7 of the Financial Services Law makes it an offence for a person to carry on trust company business in or from within Jersey unless the person is registered under the Financial Services Law.
1032. The term "by way of business" is not defined in the Financial Services Law but is interpreted broadly by the Commission. The term includes any person acting with a view to obtaining a

reward, fees, or benefits of any kind or holding himself out as willing to provide such services for one or more companies. The term also covers “one off” contracts on a self-employed basis.

Money Laundering Order

1033. Under Article 13 of the Money Laundering Order, a relevant person that is a trust and company services provider is required to find out the identity and verify the identity of the beneficial owners of a company, foundation, partnership or other legal person or arrangement that is its customer. Guidance on the application of identification measures is provided in section 4 of the Handbook for Regulated Financial Services Business and section 3 of the trust company business section of the Handbook for Regulated Financial Services Business.

1034. A relevant person that is a trust and company services provider may demonstrate compliance with Article 13 of the Money Laundering Order where it finds out and verifies the identity of:

Company

1035. Before the 24th of March 2015

- Individuals who ultimately effect control over the company’s assets, including the persons comprising the mind and management of the company, e.g. directors.
- Individuals ultimately holding an interest in the capital of the company. In the case of a PCC, Article 13 applies also to all of the constituent parts of the company (the cells) which will be considered to be a third party of the PCC under Article 3(2).
- For the identification of the UBO the cell is according to the Jersey authorities seen as a third party on whose behalf the PCC (customer) is acting.

1036. Since 24th of March

- Individuals who ultimately effect control through ownership, other means or position held.
- Individuals ultimately holding an interest in the capital of the company. In the case of a PCC, Article 13 applies also to all of the constituent parts of the company (the cells) which will be considered to be a third party of the PCC under Article 3(2).
- For the identification of the UBO the cell is according to the Jersey authorities seen as a third party on whose behalf the PCC (customer) is acting.

Foundation

- The Founder(s).
- A person (other than the founder of the foundation) who has endowed the foundation (directly or indirectly).
- If any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person.
- Any beneficiaries entitled to benefit under the foundation in accordance with the charter or the regulations of the foundation.
- Any other beneficiaries and persons in whose favour the council may exercise discretion under the foundation in accordance with its charter or regulations and that have been identified as presenting higher risk.
- All council members (other than the relevant person).
- If any decision requires the approval of any other person, that person.

- The guardian.
- Any other person exercising ultimate effective control over the foundation.

Partnership (all registered forms)

1037. As of 24th of March

- Individuals who ultimately exercise control over the partnership's assets, including the persons comprising the mind and management of the partnership, e.g. general partners and limited partners that participate in the management of the partnership.
- Individuals ultimately holding an interest in the capital of the partnership.

1038. Since 24th of March

- Individuals who ultimately exercise control through ownership, other means or position held, e.g. general partners and limited partners that participate in the management of the partnership.
- Individuals ultimately holding an interest in the capital of the partnership.

1039. Regarding Incorporated cell companies (ICCs) and protected cell companies (PCCs), the Handbook for Regulated Financial Services Business states the following:

Each of these types of cell companies may establish one or more cells. In the case of a PCC, each 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 legal personality separate from the cell company. Accordingly, where a cell wishes to contract with another party, it does so through the cell company acting on its behalf. In order to ensure that creditors and third parties are aware of this position, a director of the cell company is under a duty to notify the counterparties to a transaction that the cell company is acting in respect of a particular cell.

Where a relevant person establishes a business relationship or enters into a one-off transaction with a cell of a PCC, because the cell does not have the ability to enter into arrangements or contract in its own name, for the purposes of Article 3 of the Money Laundering Order, the PCC will be taken to be a customer acting for a third party and the particular cell will be taken to be the third party that is a person other than an individual.

1040. By contrast, in the case of an ICC, each cell has its own separate legal personality, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. Where a relevant person establishes a business relationship or enters into a one-off transaction with a cell of an ICC, the cell (a company) will be taken to be the customer.

1041. In a case where the ownership structure of a legal person to be identified (A) includes other legal persons, the beneficial owners and controllers of A will include those individuals ultimately holding a material controlling ownership interest in A.

1042. In total Jersey has 135 PCCs related to funds and 3 related to insurance.

1043. The definition of beneficial ownership in the Money Laundering Order is in line with the FATF recommendations. The Handbook for Regulated Financial Services Business though in certain instances gives the impression to mainly focus on material interest and not clearly on the controlling element that is not directly related to material interest. The Handbook for Regulated Financial Services Business has been amended and issued as of 24 March 2015. Section 4 of the Handbook for Regulated Financial Services Business reflects now in all cases the indirect control

element. Several of the institutions met appeared to follow the Handbook for Regulated Financial Services Business in this respect, explaining beneficial ownership in terms of material interest, either 25% or 10% in higher risk situations.

1044. Under Article 13 of the Money Laundering Order, a relevant person that is a trust and company services provider must also apply ongoing monitoring during a business relationship. This includes ensuring that documents, data or information obtained under identification measures are kept up to date and relevant by undertaking reviews of existing records. As a result of such a review, identification measures must be applied where a relevant person that is a trust and company services provider has doubts about the veracity or adequacy of documents, data or information previously obtained under CDD measures.

1045. Article 19 of the Money Laundering Order requires a relevant person to keep CDD records for a period of at least 5 years commencing with the date on which the business relationship ends.

Control of Housing and Work (Jersey) Law 2012

1046. In respect of a customary law partnership that conducts business in Jersey, the States of Jersey's Population Office is responsible for the administration of applications for a business licence under the Control of Housing and Work (Jersey) Law 2012. Pursuant to Part 7, an application must be made to the Population Office using a prescribed Application for a Business Licence form, which includes a question which asks for the details of all ultimate beneficial owners. The UBO is defined in the application form as 'a person who has a substantial and active interest in the running of the undertaking or the Minister needs to know who owns the company shares and their % shareholding'. It is an offence to knowingly or recklessly provide any information that is false or misleading. Following the granting of a licence, the Population Office will record a significant change in ownership (where a new partner takes on a 40% interest in a partnership).

1047. The definition in the application form comes close but is not clearly in line with the definitions under the Money Laundering Order and no further guidance is available. The focus of monitoring after the application has been approved is clearly on changes in ownership, not on changes in control.

1048. There are approximately 240 customary law partnerships operating in Jersey. They are used in particular by Jersey lawyers and general medical practitioners and, to a lesser extent, by accountants and other Jersey trading businesses. The insular authorities are aware that there are approximately 20 law firms in the Island practicing as customary law partnerships. Of the 240 incorporated associations registered with the Judicial Greffe, all but four have a local focus. The vast majority (71%) can be classified as having a purpose of either social services, sport or community projects. Most of the incorporated associations are also registered with the Commission as non-profit organisations under the Non-Profit Organizations (Jersey) Law 2008 and there is an obligation to notify the Judicial Greffe upon a change to the constitution or change of the name of the person charged to represent the incorporated association.

1049. Where this in general would mean that there is less materiality, it would still warrant monitoring for misuse.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1050. The model that Jersey applies to ensure that its competent authorities have timely access to adequate, accurate and timely beneficial ownership for legal persons may be summarised as follows:

- An application to the Companies Registry to register a company or partnership must disclose:
 - the identity of those who are to be the beneficial owners of any holding of 10% or more in the legal person; and

- other information in line with published application forms, a Registry Processing Statement, and the Sound Business Practice Policy. All of this information is held centrally and vetted against open and closed source intelligence.
 - Only Jersey-resident individuals (whose identity is found out and verified) and Jersey-licensed TCSPs may apply to register a legal person. This means that non-residents can form a legal person only through a TCSP.
 - A company and partnership must then subsequently disclose to the Companies Registry the identity of any individual who is to hold an interest of 25% or more, except where it is administered by a TCSP – where responsibility is placed on the TCSP to collect and hold information.
 - By law, each legal person must maintain (at least) a registered office in Jersey and all providers of registered office by way of business (TCSPs) must be licensed and supervised by the Commission in line with the international standard set by the Group of International Finance Centre Supervisors (“GIFCS”). This includes a “fit and proper” assessment and proactive supervisory programme.
 - Under the Money Laundering Order, all T&CSPs must apply CDD measures, including reviews of records to ensure that document, data, or information are up to date, and relevant and keep records.
1051. All legal entities incorporated in Jersey obtain legal personality upon registration by the Registrar. The Companies Law does not require that the Registrar be provided with information on beneficial ownership, which would be provided under COBO. Applications to the Registrar must include the names and addresses of each founder, of the registered office, and with respect to public companies, also the name, address, and other particulars of each director. Changes have to be registered within 21 days.
1052. All information held by the Registrar (distinct from the Commission) is accessible by the public, including online.
1053. Shareholder registers maintained by companies are accessible by the public for a fee. Directors registers are kept at the registered office and are freely accessible by company directors, members and the Registrar, but not by the public. Directors of public companies are registered by the Registrar and changes are notified as part of the annual return. Changes of directors are also submitted annually. Annual returns are filed publicly, which could lead to less up to date information effectively available to the public.
1054. The Commission holds a private record of the individuals who are to be the ultimate beneficial owners of a company or partners of a partnership immediately before registration. In the case of a company that is not provided with an administration service that is specified in Article 2(4) of the Financial Services Law by a person that is registered under that law, the Commission will also hold a record of any individual who has subsequently acquired a 25% interest in the company or partnership. Due diligence checks are performed on these beneficial owners.
1055. Information obtained and maintained by the Commission under the COBO may be accessed by other supervisory agencies from the Commission under Article 36 of the Financial Services Law. The Registrar as outlined above provides consent under the COBO under the condition that any changes in the ownership of companies not administered by registered TCBs and amounting to 25% or more are subject to approval by the Commission, with a view to ensuring that for such companies the information held is accurate and complete.
1056. Article 8 of the SBL provides the Commission with a range of powers to access any information and documentation held by all supervised persons. The Commission may require the production of information, the provision of answers to posed questions, access to the premises.

1057. Law enforcement may apply for a court order to access any information held by TCBs. The Comptroller of Taxes and the FIU do not need to rely upon a court order.
1058. Tax legislation is in place to ensure that, in accordance with international obligations entered into, information that is available can be readily provided to tax authorities and law enforcement authorities when sought, e.g. the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008.
1059. As regards foundations, the judgment *Dalemont v Senatorov and others (2012] JRC 061A* is the first case in which the foundation regime has been subject to judicial scrutiny. In this case, a Jersey foundation was found to have committed contempt of court for failing to comply with disclosure orders. The foundation's regulations permitted two unregulated council members to take the majority of decisions, including giving away powers of attorney over companies held indirectly by the foundation, without consulting the qualified member. Moreover both other council members, and the guardian, were corporate bodies controlled by appointed nominees of the sole beneficiary of the foundation. The other council members were also administered by Cypriot corporate service providers, an industry that was itself unregulated at that time. When considering the proposition that the qualified member of the council was unable to compel its fellow council members, not resident in Jersey, to disclose information not held on the Island the court considered that:
1060. “ We do think that if the result of the Foundations Law and the charter and regulations adopted in this case is as the Second Defendant [the Foundation] contends, then the relevant authorities might want to revisit with a degree of urgency the structure of the Foundations Law and the requirements that are imposed on qualified members, because the current position seems to be quite unacceptable. We are inclined to assume that both the Jersey Financial Services Commission and the Attorney General would also find the current position to be unacceptable because the service of statutory notices by either of those entities would be no more successful in ensuring the relevant information was produced than an order of this court, and for the purposes of mutual legal assistance and law enforcement, it would seem that that too would be a strange result” .
1061. The court further considered that the foundation had been organised in such a way as to be unable to comply with an order of the Royal Court., and that this “made it very difficult to prevent the underlying structures from being used for money laundering or indeed any other criminal purposes”. The court's concern also involved the fact that the service provider did not have sufficient information on the assets underlying the foundation and that under the Foundations Law, the “qualified member” did not appear to have any obligation to obtain such information.
1062. The Foundations Law has been amended as of 24 March 2015. Regulation 3 introduces a new Article 24A in the Foundations Law, placing an obligation on each member of the council of a foundation to ensure that the foundation is keeping proper accounting records. It also specifies what those records should contain and the notice that should be provided to the qualified member if a council member wishes to inspect the records. It states that accounting records should be kept by the foundation for a minimum period of 10 years.
1063. Regulation 3 also introduces a new Article 24B making an offence committed by a foundation (or other body having a separate legal personality) a criminal offence of a member of the council of a foundation (officers of other bodies having separate legal personality) or any other person purporting to act in such capacity, if:
- The offence is proven to have been committed with the consent or connivance of that person, or
 - Is attributable to any neglect on behalf of that person.
1064. If the offence is proven, the person will be liable to the same penalty as the foundation (fine level 3).

Prevention of misuse of bearer shares (c. 33.3)

1065. There has been no major change since the IMF assessment report. The Companies Law does not expressly prohibit the issuance of bearer shares. However, Article 41 provides that every company has to keep a register of its members, including the name and address of each member, the number of shares held by the member and, if applicable, the numbers printed on each share. It identifies the legal owners but the Money Laundering Order requires to look for the UBO. This information would then be held by the TCSP.
1066. Pursuant to Article 42, a transfer of shares is only valid if an instrument of transfer has been delivered to the company (except in the case of uncertificated securities settled through Euroclear – CRESTCO). Pursuant to Article 41, the failure of a company to maintain a shareholder register can result in criminal prosecution of both the company and the officer at fault.
1067. Thus, even in cases where bearer shares are issued, the company is obliged to obtain and maintain shareholder information on those shares, including the name and address of the shareholder. Through the shareholder register it is therefore ensured that legal ownership information is available with respect to any bearer shares.
1068. In cases where a nominee shareholder is registered, the nominee would generally be a relevant person under Schedule 2 and therefore obliged to obtain, verify and maintain beneficial ownership information under the Money Laundering Order. If the nominee shareholder is not a relevant person the TCSP that provides the company's registered office address will hold information on the beneficial owner.
1069. The COBO provisions would help assure that beneficial ownership information on bearer shares would be available, should such shares be issued.
1070. The authorities indicated that it is their policy, in exercising their powers under COBO, that a company would not be allowed to be incorporated if its owner was a foreign company that has issued bearer shares on the basis that it would most likely not be able to provide the information required by the Registry prior to incorporation.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1071. Financial institutions have access to all the publicly available information held by the Registrar, and to the information on the registers of members or partners as the case may be maintained at the registered offices of the different legal persons referred above. However, the information contained therein is not necessarily information on beneficial owners of the relevant legal persons.
1072. Companies need to keep their register of shareholders up to date at all times. Those companies need to provide details to the Registrar on an annual basis to update the publically available register. This annual updating of the publically available register could lead to less up to date information effectively available. However, Article 45 of the Companies Law stipulates that the register of members shall be available for inspection by: (i) any shareholders; and (ii) any other person on payment of such sum as the company may require.

5.1.2 Recommendations and comments

1073. Authorities are recommended to take measures to strengthen awareness raising regarding specifically the control element of beneficial ownership to assure that institutions do not solely focus on the material element.
1074. Authorities are recommended to take additional measures to prevent unlawful use of incorporated associations. Those measures should include specific obligations regarding direct and indirect UBOs.

1075. Authorities are recommended to include in the Control of Housing and Work (Jersey) Law 2012 or guidance published thereunder a definition of ultimate beneficial owner which is in line with the definition of the UBO in the Money Laundering Order.

1076. Authorities are recommended to amend the Companies Law and expressly prohibit the issuance of bearer shares.

1077. Authorities are recommended to consider a more frequent updating of the publically available register than once a year to assure up to date information effectively.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	LC	<ul style="list-style-type: none"> • The information collected on UBOs in respect of customary law partnerships is not fully in line with the definition of UBO in the Money Laundering Order; • Measures to prevent unlawful use of incorporated associations that do not to fall under the Companies Law, other product laws, COBO and the Financial Services Law. This risk though is partly mitigated by Loi 1862 but does not have adequate specific obligations regarding direct or indirect UBOs. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> • The information collected on UBOs in the COBO is focussing on the material element, not on the control element. The guidance to the application form was also not fully clear in this respect but has been changed and issued as of 24 March 2015; • Judiciary scrutiny of the Foundations Law has revealed legal gaps, which have led to legal changes by 24 March 2015, although their effectiveness cannot be demonstrated

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

Recommendation 34 (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

1078. Jersey was rated LC in the previous IMF assessment. The shortcomings identified were described as follows:

- While the vast majority of trust arrangements are covered by the CDD requirement of the Money Laundering Order, no measures are in place to ensure that accurate, complete, and current beneficial ownership information is also available for legal arrangements administered by any trustees not covered by or exempted from the registration requirement under the Proceeds of Crime Law.
- Beneficial ownership information is not obtained, verified and maintained for general partnerships (customary law partnerships).

Legal framework

1079. Jersey trusts law comprises both the Trusts (Jersey) Law 1984, (the “**Trusts Law**”) and the Jersey customary law of 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.

1080. 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 information on the settlor, protector, beneficiaries, persons who are the object of a power, and co-trustees.

1081. The Trusts Law does not explicitly refer to beneficial ownership, it contains though a definition that identifies several aspects, however it does not contain a reference to the element of indirect control. This could for example be done by stipulating the need to identify any other person having effective control. This element is important to identify situations as so-called 'dummy settlors' / other beneficiaries, or 'blind trusts'.

Tax Law

1082. In addition, measures are in place pursuant to the Income Tax (Jersey) Law 1961, 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 copy of the trust instrument;
- The date the trust was created;
- The name and address of the trustee;
- The name and address of the settlor; and
- The name and address of each Jersey resident beneficiary and the extent of their interest.

1083. 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.

Financial Services Law

1084. Where a person carries on a business in or from within Jersey that involves the provision of trustee or fiduciary services and, in the course of providing those services, a service which is specified in Article 2(4) of the Financial Services Law (including acting as a trustee), that person is required to register with the Commission (as a trust and company services provider). In order to register such a trustee, the Commission must be satisfied that the individual or, in the case of a legal person or partnership, the principal persons are “fit and proper” (in terms of integrity, competence and solvency). The trustee will be required to comply with Codes of Practice for Trust Company Business. In particular, a trustee must:

- Understand its duties under relevant laws and comply with the requirements of the relevant laws, including the Trusts Law; and

- Keep or satisfy itself that someone else is keeping accounting records that are sufficient to show and explain transactions, and disclose with reasonable accuracy, the financial position of the structures under administration.

The Money Laundering Order

1085. Under Article 13 of the Money Laundering Order, a relevant person that is a trust and company services provider is required to find out the identity and verify the identity of individuals who are concerned with a trust. Guidance on the application of identification measures is provided in section 4.4 and 13.3 of the Handbook for Regulated Financial Services Business. A relevant person may demonstrate compliance with Article 13 of the Money Laundering Order where it finds out and verifies the identity of: the settlor (including any persons subsequently settling funds into the trust); any person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to the trust; the protector(s); beneficiaries with a vested right; other beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk; and any other person exercising ultimate effective control over the trust.
1086. Neither the Money Laundering Order nor the AML/CFT Handbooks, as in place during the onsite visit, refer to any other natural persons exercising ultimate effective control over the trust. Several of the institutions met, appeared to follow the Handbook for Regulated Financial Services Business in this respect, explaining beneficial ownership in terms of material interest, either 25% or 10% in higher risk situations.
1087. Following the onsite visit, the Jersey authorities made several changes that came into effect on 24 March 2015 with the intention amongst others to make sure that any other individual who otherwise exercises ultimate effective control would be covered, to provide further guidance on the identification of beneficial owners and controllers and to more clearly address the concept of 'dummy settlors' and others who may have influence of the trust or trustee.
1088. To achieve this Article 3(2) of the Money Laundering Order was amended such that it explicitly specifies that identification measures also include measures for determining whether the customer is acting indirectly for a third party. Article 3(7) of the Money Laundering Order was amended such that where the customer is acting for a third party, which is not a person then individuals that otherwise exercise ultimate effective control over the third party must be identified.
1089. The Handbook for Regulated Financial Services Business was amended in several places. It now states that the Money Laundering Order requires the identity of each person who falls within Article 3(7) to be found out and evidence of identity obtained, i.e.: the settlor, the protector, having regard to risk, a person that has a beneficial interest in the legal arrangement, or who is the object of a trust power in relation to a trust and (newly added) any other individual who otherwise exercises ultimate effective control over the third party.
1090. The Handbook for Regulated Financial Services Business further states that only for 'lower risk relationships' a general threshold of 25% is considered to indicate a material controlling ownership.
1091. Under Article 13 of the Money Laundering Order, a relevant person that is a trust and company services provider must also apply ongoing monitoring during a business relationship. This includes ensuring that documents, data or information obtained under identification measures are kept up to date and relevant by undertaking reviews of existing records. As a result of such a review, identification measures must be applied where a trust and company services provider has doubts about the veracity or adequacy of documents, data or information previously obtained under CDD measures.
1092. Article 19 of the Money Laundering Order requires a relevant person to keep CDD records for a period of at least 5 years commencing with the date on which the business relationship ends.

1093. The trustee will be supervised for compliance with the Financial Services Law, legislation made under that Law, Codes of Practice for Trust Company Business, and the Money Laundering Order using the Supervisory Bodies Law and Financial Services Law. Under both laws, the Commission has access to documents, data and information on the individuals that are concerned with each trust – established in Jersey or otherwise - in a timely fashion.

1094. A person providing trustee services other than “by way of business” is not required to apply preventive measures under the Money Laundering Order. This is true also in a case where an activity is exempted from the scope of Schedule 2 of the Proceeds of Crime Law.

Measures to prevent unlawful use of legal arrangements (c. 34.1)

1095. Trusts, customary law partnerships, as well as limited partnerships are legal arrangements available under Jersey legislation.

1096. Pursuant to Schedule 2 of the Proceeds of Crime Law, any person who, by way of business, acts as or fulfils or arranges for another to act as or fulfil the function of trustees of an express trust conducts a regulated activity pursuant to the Proceeds of Crime Law and, as such, is subject to the full range of AML/CFT requirements as contained in the Money Laundering Order. Article 3 of the Money Laundering Order requires T&CSPs to identify the beneficial owner and to verify the identity as described in the definition of Article 2 of the Money Laundering Order. As described above the Handbook for Regulated Financial Services Business did not refer to any other natural persons exercising ultimate effective control over the trust at the time of the onsite visit (changed on 24 March 2015).

1097. Any person providing such services other than 'by way of business' would not be required to register with the Commission under the Financial Service Law. There is no definition of the term 'by way of business'. However, the authorities provided a legal opinion that indicated that the term seems to be interpreted broadly and is intended to exclude only trustees acting in a family arrangement or similar situation.

1098. The Jersey Government is in the process of amending Schedule 2 of the Proceeds of Crime Law in order to cover trustees who are not acting by way of business (family trusts). The Comptroller of Taxes is aware of approximately 700 trusts which have a settlor or at least one beneficiary of the trust being resident in Jersey, of which around 150 relate to family trusts. The remaining 550 are administered by regulated TCSPs, and therefore covered by the provisions of the Money Laundering Order.

1099. Schedule 2 of the Proceeds of Crime Law defines a number of exemptions from the registration requirement for trust service providers, allowing a person falling under a certain category or providing services in certain circumstances to conduct trust company activities without being subject to the CDD requirements of the Money Laundering Order, including the requirement to obtain, verify and maintain beneficial ownership information. The schedule contains 7 activities where the rationale for exemption is either:

The activity is inherently low-risk/not subject to FATF coverage.

There is no person in Jersey to attach AML/CFT obligations to.

To avoid a duplication of AML/CFT obligations.

The person carrying on the activity exempted from Schedule 2 of the Proceeds of Crime Law is acting only as principal or for a connected person or connected company.

1100. An example of such an exemption is the provision of trust company business services from outside Jersey, where the only connection with Jersey is the residence of the customer. A further exemption from registration exists for companies, the purpose of which is to provide trust company business services in respect of a specific trust or trusts that do not solicit from or provide trust company business services to the public, and the administration of which is carried out by a

person that is subject to Schedule 2 (a private trust company). This risk is partly mitigated while the obligation to comply with CDD requirements would fall on the person that is subject to Schedule 2.

1101. The authorities could not provide the assessors with an estimate of the number of trustees operating in Jersey that are exempted from the registration requirements. The Jersey authorities explained that the particular exemption that covers the activity of being a trustee –being a private trust company (PTC)- is used in 928 cases. They further explained that those are covered by the Commission during its onsite examinations. The exemption is only applied in the case that a PTC is administered by a trust and company service provider that is qualified as a financial institution in Jersey and supervised accordingly.

1102. The trustees that are not covered by or are exempted from registration, do not fall under the Money Laundering Order as described above. There is no obligation under the Trusts law for the trustee to identify and verify the identity of all persons falling under the definition of beneficial owners that covers the persons exercising ultimate effective control over a legal arrangement. The recent changes in the Money Laundering Order and the Handbook for Regulated Financial Services Business to address this aspect are in force as from 24 March 2015 as described above.

1103. Customary law partnerships are not subject to registration with the Registrar under Jersey law. There are approximately 240 customary law partnerships operating in Jersey. For limited partnerships, Article 4 of the Limited Partnerships Law requires that a declaration, indicating the registered office of the LP and the full name and address of each general partner has to be filed with the Registrar. Any changes to the filed information have to be provided by the Registrar within 21 days.

Timely access to adequate, accurate and current information on beneficial owners of legal arrangements (c. 34.2)

1104. There is no general requirement for trusts to be registered or to file information with a central authority. Registered trust service providers have to file an annual statement with the Commission, but those statements do not typically contain any information on the trusts administered, on the overall number of trusts, or on the amount of assets administered. On-site examinations of the JFSC obtain information on the number of trusts administered.

1105. Article 8(2) of the SBL provides the Commission with general powers to access any information and documentation held by registered TCBs and those carrying on unauthorised business. The Commission may require production of information, the provision of answers and access to the premises of the supervised person. Law enforcement may apply for a court order to access any information and documentation held by TCBs and any trustee that is not covered by Schedule 2.

1106. In the case of any trustees that are not covered by Schedule 2, it is questionable how complete, accurate, and current beneficial ownership information held by such unregulated and unsupervised trustees would really be. The trustees not covered are family trusts. The risk is partly mitigated since the enactment of the Taxation (Accounting Records) (Jersey) Regulations 2013 that makes a provision for the records to remain within a person's power and control and puts arrangements in place for delivery of the records to Jersey.

1107. Furthermore, there is no requirement under the Trusts Law that accounts and records kept by trustees are stored in Jersey, thus timely access is not guaranteed.

1108. The Jersey 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/CFT legislation so that trustees of all trusts are obliged to ensure that accurate, complete and current beneficial ownership information is retained and available.

1109. Information on LPs held by the Registrar is publicly accessible pursuant to Article 32 of the Limited Partnerships Law. No information is available for customary law partnerships. Customary law partnerships are not similar legal arrangements as trusts and therefore are not legal arrangements under R.34. In the previous IMF report those arrangements were considered under R.34 whereas this report considers them under R33.

Additional element – Access to information on beneficial owners of legal arrangements by financial institutions (c. 34.3)

1110. Beneficial ownership information on legal arrangements held by TCBs is not publicly available. Therefore, financial institutions do not access such information from a public source to verify CDD information. No specific measures are in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify customer identification data.

5.2.2 Recommendations and comments

1111. Recent court cases revealed the importance that the ‘letter of wishes’ could have in determining who might in practice be the controller. We would recommend therefore that the Jersey authorities require financial institutions to either ask for documents, such as the letter of wishes, to determine who the ultimate controlling beneficial owner is or to receive appropriate assurance and to keep evidence that relevant documents (such as the letter of wishes) do not contain contradictory information with other used sources, both at the start of the relationship and during the process of ongoing due diligence. Jersey authorities should also provide guidance on this issue.

1112. Jersey authorities are recommended to bring the family trusts under the Money Laundering Order.

1113. Jersey authorities are recommended to enhance awareness raising of the most recent changes in the Handbook for Regulated Financial Services Business regarding beneficial ownership.

1114. Given the significant amount of assets held through trusts in Jersey, the authorities should review the eight activities exempted from Schedule 2 of the Proceeds of Crime Law (specifically related to TCSPs related services) to ensure that the application of the exemption from AML/CFT should not be extended to activities whose low risk has not always been proven.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	LC	<ul style="list-style-type: none"> Inadequate measures to ensure that accurate, complete and current beneficial ownership information is also available for trusts administered by any trustees not covered for family trusts or administered by PTCs; <p>Effectiveness:</p> <ul style="list-style-type: none"> At the time of the visit, there was no obligation for the trustee to identify and verify the identity of any person exercising ultimate effective control over the trust who was not a settlor, protector or beneficiary. The recent changes in the Money Laundering Order and the Handbook for Regulated Financial Services Business to address this aspect have recently entered into force (24 March 2015) and its

		effectiveness could not be assessed.
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6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated C in the IMF report)

Summary of 2009 factors underlying the rating

1115. Jersey was found fully compliant on Recommendation 31 in the IMF report. The latest developments in this area include the transfer of the ministerial responsibility for all financial services areas, including overarching responsibility for financial crime policy, to the Chief Minister pursuant to the States of Jersey (Transfer of Functions No.6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013, in order to streamline and ensure more effective coordination of the Island's action in these areas. It is also important to note that the 2008 Anti-Money Laundering and Countering the Financing of Terrorism Strategy has been reviewed and updated in 2011.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1116. Political engagement is conducted through the Chief Minister and the Council of Ministers, and particularly through the Minister for Home Affairs (responsible for the Police and Customs), the Minister for External Relations (responsible for the implementation of international sanctions, including TF asset freezing) and the Minister for Treasury and Resources. The Chief Minister is responsible for formulation of the Island's strategy to combat ML and FT, for overseeing the work of the Commission and for making the statutory requirements that are placed on persons carrying on financial services business (through the Money Laundering Order) and determining which persons are covered by those requirements.

1117. Policy co-operation and co-ordination is managed through the Financial Crime Strategy Group (formerly the AML/CFT Strategy Group), which met for the first time in January 2007, and has met regularly since that date. The Group is chaired by the Director of Financial Services, Chief Minister's Department. The group includes officers from the Chief Minister's Department, Treasury and Resources Department (represented by the Comptroller of Taxes), Home Affairs Department, Law Officers' Department, JFCU, Police, Customs, the Commission, and Jersey Gambling Commission.

1118. The aims and objectives of the Strategy Group are:

- to monitor developing international standards, conventions and protocols to counter ML and FT, the financing of the proliferation of weapons of mass destruction, corruption, and other financial crime;
- to identify, assess and understand risks present in Jersey on an on-going basis, in particular the risk of ML and FT;
- to co-ordinate action taken to ensure that risks identified are mitigated effectively and that measures to prevent or mitigate financial crime, including ML and FT are commensurate with the risks identified. This might include recommending changes to Jersey's AML/CFT regime; recommending changes in the allocation and prioritisation of AML/CFT resources; and publication of information to assist with the application of a risk-based approach by industry;
- to prepare local AML/CFT policies that are informed by the risks identified and which are proportionate in their public impact; safeguard Jersey's reputation and position as a secure and dynamic place to do business; take account of the burden on business of compliance, and promote social inclusion;

- to ensure that policy-makers, the JFCU, law enforcement authorities, supervisors and other relevant competent authorities, at the policy-making and operation levels, have effective mechanisms in place to enable them to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat financial crime, including ML, FT and the financing of proliferation of weapons of mass destruction; and
- to provide advice and make recommendations to ministers as necessary, reporting on progress via the Financial Services and External Relations Advisory Group (**FERAG**)¹³⁰.

1119. Operational co-operation takes place through various mechanisms:

- Co-operation and coordination between the Law Officers' Department, JFCU, and Commission takes place through regular minuted meetings on approximately a quarterly basis, which are supplemented by the case specific tri-partite meetings called at regular intervals throughout the year. The JFCU and the Commission maintain confidential schedules detailing the most significant examples of cooperation and coordination between the three agencies.
- The Commission meets with the Chief Minister's Department, the Law Draftsman's Office and the Law Officers' Department every two months to discuss progress on various law drafting projects including those relating to AML/CFT legislation.
- Actions to identify and recover any illicitly obtained assets (linked to Arab Spring jurisdictions and Ukraine) is coordinated through the Jersey Asset Recovery Task Force, which was established in February 2013, and meets on a quarterly basis. It comprises the JFCU, Commission, Law Officers' Department and Chief Minister's Department. Under Article 34 of the Proceeds of Crime Law, as amended by the Proceeds of Crime and Terrorism Law, the Attorney General has given consent (ongoing) for the sharing of SAR information at Jersey Asset Recovery Task Force meetings.
- The Attorney General also has a Joint Working Framework Agreement with the JFCU and has given guidelines to the JFCU on the onward transmission of SARs.
- Inter-institutional secondments/deployments have also been organised, e.g. a Police Officer from the JFCU has been seconded to work with the Criminal Division of the Law Officers' Department since 2009; a member of the Commission's staff works part-time (half a day per week) in the JFCU in order that SAR information in respect of relevant persons may be pursued more efficiently; and since 2014 a Legal Adviser from the Law Officers' Department has been seconded to the JFCU.
- 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 (operational and policy) in relation to ML and FT, both locally and internationally.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1120. Jersey has put in place mechanisms for consultation between competent authorities and the financial sector. For important areas of policy development, formal consultation with industry (both directly and indirectly through Jersey Finance Limited – the representative body of the finance industry in Jersey) and others affected is undertaken by members of the Strategy Group.

¹³⁰ Membership comprised (at January 2012):- Chief Minister (chairman), Deputy Chief Minister, Assistant Chief Ministers, Minister for Treasury & Resources, Minister for Economic Development, Assistant Minister for Treasury & Resources, Chief Executive, HM Attorney General, Director International Affairs, International Affairs Advisor, Treasurer of the States, Chief Officer Economic Development & Director Tax Policy.

There is a practice of consultation papers being issued and published on the relevant members' website, including feedback received as a result of the consultation. In addition, the Commission is assisted in the formulation of policy by an AML/CFT steering group comprising of representatives of trade bodies, relevant persons, and interested individuals. This steering group is supplemented by regular meetings with compliance officers of the larger law firms (now also attended by the Chief Executive Officer of the Law Society of Jersey); and large and medium-sized accounting firms.

1121. The Commission runs consultation and training presentations in respect of amendments to the changes to the legal framework and guidance. A number of sessions were held during February, March, November and December 2014, which were widely attended. The Commission attends monthly meetings of the Jersey Bankers' Association at which AML/CFT law, regulations and guidelines are discussed. Ad hoc meetings are also held with other trade bodies.

Recommendation 30 (Policy-makers – Resources, professional standards and training)

1122. The resources of policy makers appear to be adequate and enable them to fully perform their functions. They are bound by the requirements of their administration/institution as regards the confidentiality standards and are appropriately skilled.

Recommendation 32.1 (Review of the effectiveness of the AML/CFT system on a regular basis)

1123. Since the IMF evaluation, Jersey has developed a strategy to counter money laundering and the financing of terrorism and a detailed action plan aimed at addressing the deficiencies identified in the context of the previous evaluation. The strategy has been reviewed and important progress achieved to strengthen the criminal and regulatory AML/CFT frameworks.

1124. The authorities have also indicated that given the international nature of services provided by relevant persons, significant resources also have been devoted to demonstrating the effectiveness of Jersey's system for combating ML and FT to other jurisdictions, such as the EU and the US (e.g. process seeking equivalent AML/CFT status at EU level; approval by the US Inland Revenue Service of CDD provisions for the purpose of rules on withholding tax).

1125. Following each major enforcement case, the Commission considers any lessons to be learnt from the case and utilises this information to propose where relevant, amendments to legislation, either directly or through the Law Officers' Department, and practice.

1126. The assessment team notes that the work undertaken by the Strategy Group has very much been focused to date on legislative improvements, with some effectiveness issues being discussed at policy level, while operational ML/TF issues, problems and trends are being discussed in co-ordination meetings of operational authorities. Jersey has integrated the outcome of the previous assessment, as well as the findings of its own reviews, into its policies and priorities. The changes made, under the steer of the Strategy Group, impact positively on the effectiveness of the AML/CFT system. It was however not fully demonstrated that a comprehensive review of the effectiveness of all key aspects of the AML/CFT system as a whole has been undertaken on a regular basis. Jersey has initiated the preparatory work for the implementation of the revised FATF standards, including the preparation of the national risk assessment and with a specific focus on the effectiveness of its AML/CFT system.

Effectiveness and efficiency

1127. Considering its size, population and the structure of the institutional allocation of responsibilities in the AML/CFT area, Jersey benefits from an environment which fosters co-operation and information exchange, within the boundaries of the legal framework.

1128. National co-operation between relevant counterparts is a daily practice and is assessed satisfactorily by all relevant institutions. Cooperation with the regulator (JFSC) appears to work

well, both on operational and policy-making levels. The exchange of strategic information about SARs is integrated within inter-institutional cooperation aspects. Approximately 150 sanitized cases were sent to JFSC in order to contribute to supervisory planning and to make the regulator aware about relevant cases where potential actions are needed. The JFCU has also established a co-operation agreement with the Law Officers' Department and regular joint operations take place between the JFCU (including FIU) and the Law Officers' Department. While the Strategy Group discusses also tactical level issues, its main goal remains the strategic level of policy coordination.

6.1.2 Recommendations and Comments

Recommendation 31

1129. The framework for co-operation and coordination on AML/CFT issues is strong. Jersey should continue enhancing inter-agency co-operation in support of AML/CFT efforts, notably between the FIU and the JFSC, with a view to developing further the information sharing and exchanges related to ML/TF risks within the jurisdiction and the level of compliance with AML/CFT requirements by the entities subject to supervision by the JFSC.

Recommendation 32.1

1130. Considering the recently implemented changes to the AML/CFT criminal and regulatory framework, Jersey should undertake, at appropriate times, a comprehensive review of the effectiveness of its AML/CFT system and deepen its assessment of the effectiveness of its core elements.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	C	

6.2 **The Conventions and United Nations Special Resolutions (R. 35 and SR.I)**

Recommendation 35 (rated LC in the IMF report) & Special Recommendation I (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

1131. The Summary of factors underlying the Largely Compliant rating regarding Recommendation 35 in the IMF report were two: a) the ratification of the Palermo Convention had not yet been extended to Jersey and; b) not all provisions of the Palermo and Vienna Conventions were fully implemented.

1132. The Summary of factors underlying the LC rating regarding SR I in the IMF report stated that: a) not all provisions of the FT Conventions were fully implemented; and b) not all requirements under UNSCR 1267 and 1373 were fully implemented.

6.2.1 Description and analysis

1133. Jersey is a British Crown Dependency and as such is not empowered to sign or ratify international conventions on its own behalf. Rather, the U.K. is ultimately responsible for Jersey's international relations and, following a request by the Jersey Government, may extend the UK's ratification of any convention to include Jersey.

1134. As a general principle, Jersey decides whether it wants a certain convention extended or not. If the decision is to extend it, a request for extension is forwarded to the UK. However, such extension is only requested once Jersey is satisfied that its legislation complies with any given convention.
1135. Once that determination has been made and an extension has been requested, the department of HM Government responsible for the relevant convention reviews Jersey's legislation to confirm that it is in compliance with the provisions of the particular convention and advises the Ministry of Justice and the Foreign and Commonwealth Office accordingly. A notice is then sent to the depositary for the convention such as the Secretary-General of the United Nations, or the Council of Europe, informing the depositary that the ratification has been extended to Jersey. The same process is applied to international protocols.
1136. The Jersey authorities admit this process does not always work as smoothly as it might, but assured the evaluators that Jersey regards itself as bound by the treaty or convention as the case may be from the moment that it has asked the UK to extend its instrument of ratification to include the Island.

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1137. The Vienna Convention was ratified on behalf of Jersey on 7 July 1998. It is implemented by the Misuse of Drugs Law, the Customs and Excise (Jersey) Law 1999 and the Proceeds of Crime Law.
1138. Having widened Article 173 of the Shipping (Jersey) Law 2002 so that the Jersey courts have jurisdiction in respect of offences committed on board Jersey ships on the high seas or in foreign ports/ harbours regardless of the nationality of the offender, Jersey is now in a position to have extended to it the UK's ratification of the Palermo Convention.
1139. The evaluators were surprised to acknowledge that though the extension of the Palermo Convention had been requested by Jersey even prior to the IMF evaluation, the extension of the Palermo Convention has only taken place on 17 December 2014.
1140. The Terrorist Financing Convention was ratified on behalf of Jersey on 24 September 2008. It is implemented by the Terrorism Law.
1141. Of the remaining 15 international counter-terrorism related legal instruments, the Aircraft Convention, the Unlawful Seizure Convention, the Civil Aviation Convention, the Diplomatic Agents Convention, the Hostage Taking Convention, the Plastic Explosives Convention, the Terrorist Bombing Convention, the Violence at Airports Protocol, the Maritime Convention and its protocol, the Fixed Platforms Protocol and the Nuclear Material Convention have been extended to Jersey.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1142. Jersey has implemented most of the Vienna Convention's provisions relevant to the FATF Recommendations.

Provisions of the Vienna Convention	Legislative acts and regulations that cover requirements of the Vienna Convention
Article 3 (Offences and Sanctions)	Misuse of Drugs (Jersey) Law 1978 Drug Trafficking Offences (Jersey) Law 1988 Proceeds of Crime (Jersey) Law 1999

	Crime (Transnational Organised Crime) (Jersey) Law 2008
Article 4 (Jurisdiction)	Misuse of Drugs (Jersey) Law 1978 Drug Trafficking Offences (Jersey) Law 1988 Proceeds of Crime (Jersey) Law 1999
Article 5 (Confiscation) <ul style="list-style-type: none"> with regard to confiscation of proceeds derived from offences involving illicit trafficking of narcotic drugs or psychotropic substances; with regard to seizure of property (assets); with regard to rendering mutual legal assistance. 	Drug Trafficking Offences (Jersey) Law 1988 Proceeds of Crime (Jersey) Law 1999 Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008
Article 6 (Extradition)	Extradition (Jersey) Law 2004
Article 7 (Mutual Legal Assistance)	Criminal Justice (International Co-operation) (Jersey) Law 2001 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983
Article 8 (Transfer of Proceedings)	Ongoing obligation to consider this possibility
Article 9 (Other Forms of Cooperation and Training)	Addressed but not by legislative measures
Article 10 (International Cooperation and Assistance for Transit States)	Addressed but not by legislative measures
Article 11 (Controlled Delivery)	Customs and Excise (Jersey) Law 1999
Article 15 (Commercial Carriers)	Customs and Excise (Jersey) Law 1999 Misuse of Drugs (Jersey) Law 1978 Drug Trafficking Offences (Jersey) Law 1988 Proceeds of Crime (Jersey) Law 1999
Article 17 (Illicit Traffic by Sea)	Drug Trafficking Offences (Jersey) Law 1988 Misuse of Drugs (Jersey) Law 1978 Criminal Justice (International Co-operation) (Jersey) Law 2001 Criminal Justice (International Co-operation) (Jersey) Regulations 2008
Article 19 (The Use of the Mails)	Customs and Excise (Jersey) Law 1999 Police Procedures and Criminal Evidence (Jersey) Law 2003 Police Procedures and Criminal Evidence (Application to Customs and Excise) (Jersey) Order 2004

1143. However, the deficiencies identified with regard to R.3 are relevant in this report. Measures to enforce freezing/seizing and confiscation orders do not relate to all property required, including to property of corresponding value (gifts) .

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

Provisions of the Palermo Convention	Legislative acts and regulations that cover requirements of the Palermo Convention
Article 5 (Criminalisation of Participation in an Organized Criminal Group)	Criminal Offences (Jersey) Law 2009 Crime (Transnational Organised Crime) (Jersey) Law 2008
Article 6 (Criminalisation of the Laundering of Proceeds of Crime)	Proceeds of Crime (Jersey) Law 1999 Terrorism (Jersey) Law 2002 Drug Trafficking Offences (Jersey) Law 1988 Criminal Offences (Jersey) Law 2009
Article 7 (Measures to Combat Money-Laundering)	Proceeds of Crime (Jersey) Law 1999 Terrorism (Jersey) Law 2002 Drug Trafficking Offences (Jersey) Law 1988 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 Money Laundering (Jersey) Order 2008 Banker's Books Evidence (Jersey) Law 1986 Banking Business (Jersey) Law 1991 Financial Services (Jersey) Law 1998 Investigation of Fraud (Jersey) Law 1991 Criminal Justice (International Co-operation) (Jersey) Law 2001 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 Customs and Excise (Jersey) Law 1999
Article 10 (Liability of Legal Persons)	Interpretation (Jersey) Law 1954 Criminal Offences (Jersey) Law 2009 Crime (Transnational Organised Crime) (Jersey) Law 2008
Article 11 (Prosecution, Adjudication and Sanctions)	Criminal Offences (Jersey) Law 2009 Crime (Transnational Organised Crime) (Jersey) Law 2008 Proceeds of Crime (Jersey) Law 1999 Terrorism (Jersey) Law 2002 Drug Trafficking Offences (Jersey) Law 1988 Corruption (Jersey) Law 2006 Criminal Procedure (Prescription of Offences) (Jersey) Law 1999
Article 12 (Confiscation and Seizure)	Proceeds of Crime (Jersey) Law 1999 Terrorism (Jersey) Law 2002 Drug Trafficking Offences (Jersey) Law 1988 Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 Criminal Justice (Forfeiture Orders) (Jersey) Law 2001 Customs and Excise (Jersey) Law 1999 Crime and Security (Jersey) Law 2003 Banker's Books Evidence (Jersey) Law 1986 Investigation of Fraud (Jersey) Law 1991 Criminal Justice (International Co-operation) (Jersey) Law 2001
Article 13 (International Cooperation for	Proceeds of Crime (Jersey) Law 1999

Provisions of the Palermo Convention	Legislative acts and regulations that cover requirements of the Palermo Convention
Purposes of Confiscation)	Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 Terrorism (Jersey) Law 2002 Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 Drug Trafficking Offences (Jersey) Law 1988 Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 Criminal Justice (International Co-operation) (Jersey) Law 2001 Criminal Justice (International Co-operation) (Jersey) Regulations 2008
Article 14 (Disposal of Confiscated Proceeds of Crime or Property)	Proceeds of Crime (Jersey) Law 1999 Drug Trafficking Offences (Jersey) Law 1988
Article 15 (Jurisdiction)	Proceeds of Crime (Jersey) Law 1999 Shipping (Jersey) Law 2002 Aircraft Navigation (Jersey) Law 2014
Article 16 (Extradition)	Extradition (Jersey) Law 2004 Extradition (Code of Practice for Identification) (Jersey) Order 2005 Extradition (Code of Practice for the treatment of Detained Persons) (Jersey) Order 2005 Extradition (Code of Practice for Treatment of Property) (Jersey) Order 2005 Extradition (Time Limits) (Jersey) Order 2005 Extradition (Treatment and Rights) (Jersey) Order 2005 Extradition (Multiple Offences) (Jersey) Order 2009
Article 18 (Mutual Legal Assistance)	Proceeds of Crime (Jersey) Law 1999 Terrorism (Jersey) Law 2002 Drug Trafficking Offences (Jersey) Law 1988 Criminal Justice (International Co-operation) (Jersey) Law 2001 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983 Investigation of Fraud (Jersey) Law 1991
Article 19 (Joint Investigations)	Addressed but not by legislative measures
Article 20 (Special Investigative Techniques)	Customs and Excise (Jersey) Law 1999 Regulation of Investigatory Powers (Jersey) Law 2005 Police Procedures and Criminal Evidence (Jersey) Law 2003
Article 24 (Protection of Witnesses)	Criminal Justice (Evidence of Children) (Jersey) Law 2002 Criminal Procedure (Notice of Expert Evidence) Rules 2000
Article 25 (Assistance to and Protection of Victims)	Criminal Justice (Compensation Orders) (Jersey) Law 1991

Provisions of the Palermo Convention	Legislative acts and regulations that cover requirements of the Palermo Convention
Article 26 (Measures to Enhance Cooperation with Law Enforcement Authorities)	Addressed but not by legislative measures
Article 27 (Law Enforcement Cooperation)	Addressed but not by legislative measures
Article 29 (Training and Technical Assistance)	Addressed but not by legislative measures
Article 30 (Other Measures: Implementation of the Convention through Economic Development and Technical Assistance)	Addressed but not by legislative measures
Article 31 (Prevention)	Addressed but not by legislative measures
Article 34 (Implementation of the Convention)	Criminal Offences (Jersey) Law 2009 Crime (Transnational Organised Crime) (Jersey) Law 2008 Proceeds of Crime (Jersey) Law 1999 Terrorism (Jersey) Law 2002 Drug Trafficking Offences (Jersey) Law 1988 Corruption (Jersey) Law 2006 Criminal Procedure (Prescription of Offences) (Jersey) Law 1999

1144. Jersey has in fact implemented most of the Palermo Convention's provisions relevant to the FATF Recommendations. However, the deficiencies identified above with regard to R.3 are relevant in this context (see above) especially, the measures to provisionally restrain and confiscate proceeds of crime and instrumentalities used/intended for use in the crime are not fully in line with the international standard, as outlined under section 2 of this report.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1145. Jersey's legislation meets most of the requirements of the Suppression of the Financing of Terrorism Convention.

Provisions of the UN International Convention for the Suppression of the Financing of Terrorism	Legislative acts and regulations that cover requirements of the UN International Convention for the Suppression of the Financing of Terrorism
Article 2	Terrorism (Jersey) Law 2002
Article 3	Criminal Justice (International Co-operation) (Jersey) Law 2001 Criminal Justice (International Co-operation) (Jersey) Regulations 2008 Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983 Extradition (Jersey) Law 2004 Human Rights (Jersey) Law 2000 Criminal Offences (Jersey) Law 2009 Crime (Transnational Organised Crime) (Jersey) Law 2008

Provisions of the UN International Convention for the Suppression of the Financing of Terrorism	Legislative acts and regulations that cover requirements of the UN International Convention for the Suppression of the Financing of Terrorism
	<p>Proceeds of Crime (Jersey) Law 1999</p> <p>Money Laundering (Jersey) Order 2008</p> <p>Financial Services (Jersey) Law 1998</p> <p>JFSC Codes of Practice</p> <p>Customs and Excise (Jersey) Law 1999</p>
Article 4	Terrorism (Jersey) Law 2002
Article 5	<p>Terrorism (Jersey) Law 2002</p> <p>Interpretation (Jersey) Law 1954</p>
Article 6	Terrorism (Jersey) Law 2002
Article 7	Terrorism (Jersey) Law 2002
Article 8	<p>Proceeds of Crime (Jersey) Law 1999</p> <p>Terrorism (Jersey) Law 2002</p>
Article 9	<p>Terrorism (Jersey) Law 2002</p> <p>Extradition (Jersey) Law 2004</p> <p>Police Procedures and Criminal Evidence (Jersey) Law 2003</p>
Article 10	<p>Terrorism (Jersey) Law 2002</p> <p>Extradition (Jersey) Law 2004</p>
Article 11	Extradition (Jersey) Law 2004
Article 12	<p>Criminal Justice (International Co-operation) (Jersey) Law 2001</p> <p>Criminal Justice (International Co-operation) (Jersey) Regulations 2008</p> <p>Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983</p>
Article 13	Addressed but not by legislative measures
Article 14	Addressed but not by legislative measures
Article 15	Extradition (Jersey) Law 2004
Article 16	Addressed but not by legislative measures
Article 17	Human Rights (Jersey) Law 2000
Article 18	<p>Criminal Offences (Jersey) Law 2009</p> <p>Crime (Transnational Organised Crime) (Jersey) Law 2008</p> <p>Proceeds of Crime (Jersey) Law 1999</p> <p>Money Laundering (Jersey) Order 2008</p> <p>Financial Services (Jersey) Law 1998</p> <p>JFSC Codes of Practice</p> <p>Customs and Excise (Jersey) Law 1999</p>

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1146. As discussed under Special Recommendation III, Jersey has implemented the requirements of UNSCRs 1267 and 1373. As noted earlier in this report, the shortcomings identified with regard to R.3, especially with regard to the scope of provisional measures, might hamper effectiveness of action taken against funds with regard to SR.III whenever this involves criminal proceedings regarding assets belonging to terrorist organisation designated under UNSCR 1373 or mutual legal assistance requests regarding such assets.

Additional element – Ratification or Implementation of other relevant international conventions

1147. In addition to the above referenced conventions and protocols, the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and the UN Convention Against Corruption have been extended to Jersey and extension of the U.K.'s ratification of the 1990 Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime ("Strasbourg Convention") was extended to Jersey in January 2015, taking effect on 1 May 2015. The UN Convention Against Corruption was extended to Jersey in 2009¹³¹. The position in respect of "Strasbourg Convention" is the same as the position in respect of the Palermo convention. This has been implemented by the Proceeds of Crime Law and the Criminal Justice (International Cooperation) Law.

6.2.2 Recommendations and comments**Recommendation 35**

1148. The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented.

Special Recommendation I

1149. The authorities should take measures to address the outstanding shortcomings.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none"> Not all provisions of the Palermo and Vienna Conventions are fully implemented. (shortcomings with respect to R 3.)
SR.I	LC	<ul style="list-style-type: none"> The shortcomings identified with regard to R.3, especially with regard to the scope of provisional measures, could hamper action taken against funds with regard to SR.III whenever this involves criminal proceedings regarding assets belonging to terrorist organisation designated under UNSCR 1373 or mutual legal assistance requests regarding such assets.

¹³¹ Declaration transmitted by a letter from the Permanent Representative of the United Kingdom, dated 6 January 2015, registered at the Secretariat General on 9 January 2015 - Or. Engl. The Government of the United Kingdom of Great Britain and Northern Ireland declares that, in accordance with Article 38 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the United Kingdom's ratification of the Convention shall be extended to the territory of the Bailiwick of Jersey, for whose international relations the United Kingdom is responsible. Period covered: 1/5/2015 – <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=141&CM=8&DF=18/05/2015&CL=ENG&VL=1>

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the IMF report)

1150. Jersey provides a wide range of mutual legal assistance based on the principle of reciprocity, whereby there is an assumption of reciprocity when requests are first received and this assumption applies unless and until experience suggests otherwise. The Attorney General is the designated authority to receive and deal with mutual legal assistance requests. The U.K. Central Authority for Mutual Legal Assistance is generally not involved in the process.

1151. Jersey has not entered into any bilateral or multilateral MLA treaties. However, the U.K.'s ratification of the 1959 European Convention on Mutual Legal Assistance in Criminal Matters with Additional Protocol of March 1978 has been extended to include Jersey. Furthermore, the U.K.'s ratification of the Vienna Convention and the Suppression of the Financing of Terrorism Convention, and the United Nations Convention Against Corruption have all been extended to Jersey, all of which include components relating to MLA. Where a request is made based on one of these Conventions, domestic law gives the Jersey Attorney General discretion in providing MLA. The Council of Europe's Convention on Laundering Search, Seizure and Confiscation of the Proceeds of Crime 1990 was extended to Jersey in January 2015¹³².

Summary of 2009 factors underlying the rating

1152. The 2009 evaluators found Jersey to have a comprehensive MLA system in place and rated it LC due to the Deficiencies in the ML criminalization which affect the MLA capacity where the dual criminality principle applies, and Mutandis Mutandis regarding SR.V LC due to the deficiencies in the FT criminalization which affect the MLA capacity where the dual criminality principle applies.

Legal framework

1153. The relevant pieces of legislation containing provisions dealing with mutual legal assistance include the Criminal Justice (International Co-operation) Law, the Investigation of Fraud Law, the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983, and the Enforcement of Confiscation Orders Regulations.

1154. Guidelines regarding Mutual Legal Assistance have been published by the Attorney General and have been provided to the evaluators.

1155. The law most frequently used to render mutual legal assistance is the Criminal Justice (International Co-operation) Law, which applies to all offences for which the maximum sentence in Jersey is not less than one year's imprisonment ("serious offences") and therefore applies to all money laundering offences, regardless of the predicate offence, as well as to terrorism financing offences. In addition, the Enforcement of Confiscation Orders Regulations, and the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 contain specific provisions dealing with the seizing of property upon request by a foreign jurisdiction to secure funds or property that is or may become subject to foreign confiscation orders.

1156. In addition to the laws indicated above, Jersey may provide MLA based on the Investigation of Fraud Law if the case for which assistance has been requested involves fraud related money laundering, production, search and seizure of information, document or evidence:

¹³² It entered into force on 1st of May 2015.

1157. The main provisions for the production, search, and seizure of information, documents or other evidence for the purposes of providing mutual legal assistance in criminal matters are contained in Articles 5 and 6 of the Criminal Justice (International Co-operation) Law. In addition, Article 2 of the Investigation of Fraud Law may be used by the Jersey authorities to obtain evidence, information or documents relating to a criminal case in a foreign jurisdiction.
1158. Article 5 of the Criminal Justice (International Co-operation) Law specifies that upon receipt of a request for mutual legal assistance, the Attorney General may issue a notice in writing to any person requiring the person
- (1) to attend and give evidence in proceedings before the court or the Viscount in relation to the request,
 - (2) to provide to the Attorney General, the court or the Viscount any documents, or other articles as specified in the notice and/or
 - (3) to attend and give evidence in proceedings before the court or the Viscount in relation to the evidence produced.
1159. Pursuant to Article 5(9) and (1), the provision also allows for the production of documents or evidence otherwise covered by the customary law duty of confidentiality.
1160. Failure to comply with the requirement specified in the Attorney General's notice constitutes an offence pursuant to Article 4 of the Criminal Justice (International Cooperation) Law. Article 5A of the Criminal Justice (International Co-operation) Law, however, provides that a person cannot be compelled to give evidence in relation to a foreign request if he/she could not be compelled to give this evidence in criminal proceedings in Jersey or in the requesting jurisdiction. A person's claim to have a right to exemption pursuant to Article 5A has to be confirmed by the requesting prosecution, court, tribunal, or authority.
1161. The measures pursuant to Article 5 of the Criminal Justice (International Co-operation) Law may only be taken if: (1) the request is made by a prosecuting authority, an authority which appears to be authorized to make such a request, or by a court or tribunal exercising criminal jurisdiction in a country or jurisdiction outside of Jersey; and (2) the Attorney General is satisfied that an offence under the law of the requesting country has been committed or there are reasonable grounds to believe that such an offence has been committed and that criminal proceedings or a criminal investigation have been instituted in the requesting jurisdiction with respect to that offence. Dual criminality is therefore not required in the context of Article 5.
1162. Article 6 of the Criminal Justice (International Co-operation) Law further provides for coercive measures based on a warrant issued by the Bailiff issued upon request by the Attorney General. The order may allow for: (1) the search of premises for the purpose of discovering evidence; and (2) the seizure of any evidence found on the searched premises.
1163. A warrant pursuant to Article 6 of the Criminal Justice (International Cooperation) Law may only be issued by the Bailiff if he is satisfied: (1) that criminal proceedings have been instituted or an arrest been made in the course of a criminal investigation in the requesting country or that there are reasonable grounds to believe that proceedings will be instituted or an arrest be made in the course of a criminal investigation in the requesting country; (2) that the conduct in question would constitute a "serious offence" had it been committed in Jersey; and (3) that there are reasonable grounds to suspect that there is evidence on premises in Jersey relating to the offence. Any evidence seized by the Police pursuant to such a warrant has to be furnished to the Attorney General for transmission to the requesting country. In comparison to Article 5, coercive measures pursuant to Article 6 may therefore only be taken based on dual criminality.
1164. Article 2 of the Investigation of Fraud Law provides that the Attorney General has the discretion to exercise his powers under the law where there is a suspected offence, wherever committed, involving 'serious or complex fraud'. As the provisions of the law extend to criminal

activity both in and outside of Jersey, they can be directly applied to international requests for assistance.

1165. While the term “fraud” is not defined in the law, in *Foster vs. Attorney General* the Jersey Court of Appeal held that the term is to be interpreted broadly to extend to “any deliberate false representation with the intention and consequence of causing thereby actual prejudice to someone and actual benefit to himself or another”. The authorities stated that due to the broad interpretation by the court, the term would cover a wide range of criminal conduct producing illegal proceeds, and that in practice the provisions of the law have been used to provide MLA in fraud-related money laundering cases.
1166. Pursuant to the Article 2 of the Investigation of Fraud Law, the Attorney General has the power to issue a notice: (1) requiring the person under investigation or any other person to answer questions or otherwise furnish information relevant to the investigation; and/or (2) requiring the production of any documents which appear to the Attorney General to relate to the matter under investigation; as well as to (3) take copies of such documents or request the person producing them to furnish an explanation of the documents.
1167. In cases where a person fails to comply with the requirements and obligations provided for in the notice, or where it is not practicable for the Attorney General to serve a notice, or where a notice would seriously prejudice the investigation, Article 2 also provides for the Attorney General to apply to the Bailiff for a warrant to enter and search premises and to seize relevant documents.
1168. In addition to the measures outlined above, in cases that are already at the trial stage in the requesting country Article 2(2) of the Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983 provides that the Attorney General may apply to the Royal Court on behalf of the requesting country for an order for the production of documents in Jersey.

Taking of evidence or statements from persons:

1169. As indicated above, pursuant to Article 5 of the Criminal Justice (International Cooperation) Law the Attorney General may require any person or witness to appear before the authority specified in the notice and to provide a voluntary witness statement or to provide testimony in relation to evidence produced. If a person to whom a notice has been given pursuant to Article 5 or any other witness does not comply with the Attorney General’s request, the court or the Viscount may secure the attendance of that person through coercive measures.
1170. Furthermore, pursuant to Article 2 of the Investigation of Fraud Law outlined above, the Attorney General may require a person under investigation or any other person to answer questions or to furnish information relevant to the investigation or to evidence produced by that person.
1171. In cases where the case is already at the trial stage in the requesting country, Article 2(2) of the Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983 further provides that the Attorney General, on behalf of the requesting country, may apply to the Royal Court for an order for examination of witnesses, either orally or in writing.

Providing originals or copies of relevant documents and records as well as any other information and evidentiary items:

1172. Article 5B of the Criminal Justice (International Co-operation) Law provides that evidence received by the court or the Viscount has to be forwarded to the Attorney General for transmission to the court, tribunal or other authority which made the request. The provision further specifies that the Attorney General may transmit to the requesting country any evidence provided to him based on the request, including the original document or evidence or a copy, picture, description or other representation thereof, as may be necessary to comply with the request.

1173. In addition, pursuant to Article 3 of the Investigation of Fraud Law, evidence or documents obtained by the Attorney General may be provided to the requesting authorities for the purposes of any investigation or prosecution of a complex or serious fraud offence, including money laundering.

Effecting service of judicial documents:

1174. Article 2 of the Criminal Justice (International Co-operation) Law provides that the Attorney General may cause: (1) a summons or other process requiring a person to appear as a defendant or witness in criminal proceedings in the requesting jurisdiction; and (2) any document issued by and recording the decision of a court exercising criminal jurisdiction in the requesting country to be served in Jersey. Serving any of the mentioned documents would not, however, create a legal obligation under Jersey law to comply with it.

Voluntary Appearances

1175. Facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country does not require any specific legal provision, but is a normal form of assistance based on the general practice of the Attorney General.

Widest possible range of mutual assistance (c.36.1)

1176. The Jersey authorities take pride in offering the widest possible range of Mutual Legal Assistance available according to its laws.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1177. There are no formal time requirements in place when dealing with mutual legal assistance requests. In the guidelines issued to the public and posted on Jersey's government homepage (<http://www.gov.je/LawOfficers>) it is stated that the time for processing a request "*depends on the workload of the Division and the complexity of the Request. In general terms it would be our target to deal with Requests within three months from receipt. If your Request is particularly urgent you should specify this in the Request, providing reasons.*"

1178. The average processing time for mutual legal assistance requests in the period from January 2009 to September 2014 is 145.6 days (from receipt to finalisation of the process). This average is affected by incoming requests where additional information is asked from the requesting country and the delay in such information being provided, thus impacting on the time period for executing the request.

Mutual legal assistance should not be prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions (c. 36.2)

1179. Jersey gives assistance in criminal matters at the investigative and the evidential stage. There is a review of the proportionality of the Request, and the Attorney General clearly has to meet the requirements of domestic law before he is able to give such assistance.

1180. Reciprocity is expected, but there is an assumption of reciprocity when Requests are first received and this assumption would apply unless and until experience suggested otherwise. Dual criminality is not required except where a *saisie judiciaire* is sought pursuant to the Proceeds of Crime Law as modified by the Enforcement of Confiscation Orders Regulations or where a search warrant is to be obtained from the Royal Court under Article 6 of the Criminal Justice (International Cooperation) Law.

1181. However the shortcomings identified previously in this report (R.3) on availability of a *saisie judiciaire* with regard confiscation of assets representing corresponding value in the context of

gifts and especially those made into trusts, may hamper the ability to offer effective MLA in such cases.

1182. As a small jurisdiction with limited resources it is considered reasonable to require that cases should be of appropriate seriousness before any request for assistance is actioned. However, Jersey provides assistance in the vast majority of cases.
1183. Articles 10 and 11 of the Regulation of Investigatory Powers (Jersey) Law 2005 allow for the provision of assistance in the interception of postal services or telecommunication systems.
1184. In addition to assistance in criminal matters, Jersey is able to provide assistance in civil asset forfeiture cases under the Civil Asset Recovery (International Cooperation) Law.
1185. The Attorney General has a general policy that he will not provide assistance where Jersey itself would not request the help of another country in the same circumstances on grounds of cost and/or seriousness. Each Request will be considered on its merits but where a case involves financial prejudice the Attorney General will be hesitant to provide assistance where the figure falls below £10,000 (or equivalent) unless there are good public policy grounds to do so. In the case of serious or complex fraud, this guideline figure is £2,000,000 or equivalent.¹³³
1186. The authorities have indicated that this has not been a concern to date, as the threshold figures are not set in stone and can be varied in appropriate cases (for example, those cases which touch upon some particular point of public importance). In addition, it was only relatively recently that the threshold figure applied to the International Co-operation Law (£10,000) was reduced from £100,000. The figures are therefore kept under review.
1187. The threshold applied to the Fraud Law (£2 million) accords with the wording of Article 2 of the statute (serious or complex fraud). The lowest figure ever applied under the Fraud Law was £1 million – although it has been as high as £5 million. If a fraud with a prejudice figure of less than £2 million is received it can be dealt with under the International Co-operation Law in any event. Refusal on the grounds of a Request falling below a threshold figure was very rare.
1188. The authorities have indicated that they have rejected providing MLA on the basis that proceeds of crime were below the threshold in three cases from 2010 and 2011, where the figures ranged from £100 to £6,000. In the latter case, though the request was declined for formal MLA cooperation, a witness statement was obtained upon the authorities request on a voluntary informal basis.
1189. Dual criminality is necessary to take search and seizing measures provided for in Article 6 of the Criminal Justice (International Co-operation) Law and for seizing and confiscation measures pursuant to the Proceeds of Crime Law as amended by Enforcement of Confiscation Orders Regulations. Equally, conduct has to constitute “serious fraud” in accordance with Jersey law for the provisions of the Investigation of Fraud Law to be applicable to a mutual legal assistance request.

Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays (c. 36.3)

1190. According to guidelines providing mutual legal assistance depends on the workload of the Division and the complexity of the Request. In general terms it would be the Jersey authorities

¹³³ The Attorney General has abolished on 13 August 2015 the Guideline MLA figures of £10,000 (2001 Law) and £2,000,000 (1991 Law), with each case being decided on its individual merits. The revised text of the policy now reads: “The Attorney General has a general policy that he will provide assistance in circumstances where Jersey would request the help of another country in the same circumstances, having regard to cost and/or seriousness of the investigation concerned. Each Request will be considered on its merits”. The full updated MLA guidelines may be found at http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID_MutualLegalAssistanceGuidelinesupdated130112_CS.pdf

target to deal with Requests within three months from receipt if all necessary information is provided the Law Officers' Department, unless the case is unusually complex. Delays are usually encountered when Requests require clarification or further information.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1191. There is no statutory provision to this effect. The authorities have assured the evaluators that no requests are refused on these grounds. There is no reference in the guidelines to tax matters other than that - "Tax Information Exchange Agreements are also in place with several countries."¹³⁴

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1192. There is no statutory provision with regard to mutual legal assistance to this effect and the Jersey authorities have assured the evaluators that no requests are refused on these grounds. Nevertheless the deficiencies identified in this report with regard to legal privilege especially in the context of terrorist financing where the necessary legislative amendments have not yet been made may hamper effective MLA¹³⁵.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1193. The powers of competent authorities required under R.28 are also available for use in response to requests for mutual legal assistance as prescribed in the Investigation of Fraud Law and the Criminal Justice (International Cooperation) Law. Powers under the Proceeds of Crime Law and the Terrorism Law as modified by the Enforcement of Confiscation Orders Regulations and the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2008 respectively are also available.

Avoiding conflicts of jurisdiction (c. 36.7)

1194. The Jersey authorities claim to resolve potential conflicts of jurisdiction on a case by case basis with the Competent Authorities of other countries. In this context, Jersey has had experience of dealings with the UK, the US, France and the Federal Republic of Nigeria (the latter in relation to some Abacha frauds) and have liaised with other jurisdictions and with Eurojust in various cross border cases.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1195. There is no direct requesting process between the JFCU and its foreign counterparts or other law enforcement authorities. All requests for mutual legal assistance (to secure information for evidential purposes) have to go through the Law Officers' Department.

Special Recommendation V (rated LC in the IMF report)

Summary of 2009 factors underlying the rating

1196. Jersey was rated LC in the 2009 report due to deficiencies in the TF criminalization which could affect the MLA capacity where the dual criminality principle applies.

International Co-operation under SR. V (applying 36.1 – 36.7 in R.36, c.V.1)

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1197. There is no statutory provision with regard to mutual legal assistance to this effect and the Jersey authorities have assured the evaluators that no requests are refused on these grounds.

¹³⁴ <http://www.gov.je/TaxesMoney/InternationalTaxAgreements/TIEA/Pages/index.aspx>

¹³⁵ The Terrorism (Amendment No 4) (Jersey) Law 2015 came into force on 20 June 2015.

Additional element under SR V (applying c. 36.8 in R. 36, c.V.6)**Recommendation 32 (Statistics – c. 32.2)**

1198. The authorities keep detailed statistics in relation to MLA and extradition requests.

1199. The table below shows that 20 mutual legal assistance requests were made by Jersey in respect of money laundering cases since 2011.

Year	Case	Number	Requested Jurisdiction
2011	Operation League	1	UKCA
	Operation Keratin	1	Kenya (Extradition Request)
2012	Operation League	1	UKCA
	Operation Blackwood	2	UKCA
	Operation Transom	1	UKCA
2013	Operation Galosh	2	UKCA
	Operation League	2	UKCA
	Operation Blackwood	1	UKCA
2014	Operation Galosh	1	UKCA
	Operation Galosh	1	New Zealand
	Operation Galosh	1	Guernsey
	Operation Blackwood	2	UKCA
	Operation Blackwood	1	Scotland
	Operation Blackwood	1	Republic of Ireland
	Operation Oscar	1	Jurisdiction in Far East
2015	Operation Blackwood	1	UKCA

Effectiveness and efficiency

1200. The Jersey authorities have provided several good examples of international judicial co-operation, both in mutual legal assistance (incoming and outgoing) and extradition, and though over focused on fiscal matters, have adopted a proactive approach by seeking to assist foreign countries to locate and confiscate the proceeds of crime as well as prosecute the associated predicate and money laundering offences either in Jersey or abroad.

6.3.2 Recommendations and comments**Recommendation 36**

1201. Amend the law to correct the deficiencies with regard to seizure and confiscation of corresponding value.

1202. The monetary limits for mutual legal assistance can hinder co-operation, thus the current approach should be reviewed by Jersey authorities¹³⁶.

¹³⁶ The Attorney General has abolished on 13 August 2015 the Guideline MLA figures of £10,000 (2001 Law) and £2,000,000 (1991 Law), with each case being decided on its individual merits.

Special Recommendation V

1203. At the time of the onsite visit, the evaluation team considered that it was necessary to amend the law to correct the deficiencies in the TF offence, in order to facilitate full compliance with MLA requests regarding TF. However, these are not detailed for the purpose of the action plan, given that in the meantime legislative amendments have been adopted¹³⁷ on the 10th March 2015 and communicated for Royal Assent on the 20th March 2015 (see SR.II).

Recommendation 30

1204. Considering the information provided in respect of outgoing MLA requests, and the international nature of the business, Jersey is urged to further enhance the capacity of the relevant authorities to successfully investigate suspicions of domestic money laundering originating from SARs, foreign FIU inquiries or MLA requests.

Recommendation 32

1205. Not applicable.

6.3.3 Compliance with Recommendation 36 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36 ¹³⁸	LC	<ul style="list-style-type: none"> Deficiencies with regard to seizure and confiscation of corresponding value identified with regard to R.3 may hamper effective MLA. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The monetary threshold could have inhibited countries from requesting MLA assistance.
SR.V ¹³⁹	C	

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis*Summary of 2009 factors underlying the rating*

1206. Recommendation 40 was rated as Compliant by the IMF. No recommendations or comments were presented in the report.

Wide range of international cooperation (c.40.1)

¹³⁷ Terrorism (Amendment No.4) (Jersey) Law 2015 was adopted by the States Assembly on 10th March 2015 and came into force, following Royal Assent, on 20th June 2015.

¹³⁸ The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendation 28.

¹³⁹ The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 37, 38 and 39.

FIU

1207. Under Article 34 of the Proceeds of Crime and Article 25 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, information that is contained in a SAR can be disclosed by the JFCU outside the Island with the Attorney General's consent generally (by reference to guidelines drawn up by the Attorney General and amended from time to time), or specifically on a case-by-case basis, for the purpose of the investigation of crime outside the Island or of criminal proceedings outside the Island or to assist a competent authority outside the Island. The Attorney General may impose restrictions on the use of the information (intelligence only) and may restrict the further disclosure of the information to any other person or body.

1208. Under Article 36(1)(g) and 36(4) of the Supervisory Bodies Law as amended by the Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014 (and equivalent provisions in the regulatory laws), information that is provided to the JFCU by the Commission can be disclosed by the JFCU outside the Island with the Attorney General's consent. In practice, the JFCU would also seek the consent of the Commission to do so.

Law enforcement authorities

1209. Jersey law enforcement authorities give assistance in criminal matters at the investigative and the evidential stage. Law enforcement authorities use mainly communication channels of Europol and Interpol. There is very close cooperation with UK law enforcement authorities. Communication with other law enforcement authorities is performed using the Attorney General guidelines.

Supervisory authority

1210. The Commission has a wide range of powers to licence, supervise and enforce the regulatory regime in Jersey. As regards international co-operation under the Financial Services Law, the Commission is able to assist an overseas supervisory authority with requests related to:

- applications from financial institutions for licensing in the overseas jurisdictions
- response to enquiries relevant to the fitness and propriety of overseas financial institutions or their managers
- suspicion, that a person is conducting financial business in an overseas jurisdiction without a license
- undertaking onsite examinations in Jersey of branches or subsidiaries of overseas companies

1211. The regulatory laws and Supervisory Bodies Law do not require bilateral agreements to be in place in order to cooperate internationally. The Commission has however concluded 76 bilateral memoranda of understanding and two letters of intent with overseas financial services regulators. A summary of bilateral memoranda is published at the Commission's website. The purpose of each memorandum is to establish an agreed mechanism under which both signatories commit to using their statutory powers of cooperation. Jersey also is a signatory to IOSCO's, and more recently to the IAIS multilateral memorandum of understanding. The memoranda set respectively a benchmark for cooperation on combating securities and derivatives violations, and insurance violations. The memoranda commit the Island to sharing a wide range of information about the illegal use of the securities, derivatives, and insurance markets with securities and insurance regulators in other countries. Before signing the memoranda, the Commission had to satisfy IOSCO/IAIS that it has the necessary laws, powers and practices to cooperate effectively in investigations.

1212. The Commission is also responsible for registering and overseeing businesses subject to AML/CFT legislation and the legal basis for these powers are enshrined in the Supervisory Bodies) Law. Many of these powers can be exercised for the purposes of assisting overseas

supervisory authorities with enquiries concerning matters listed above and in relation to entities under AML/CFT oversight legislation.

1213. In addition to the above, the Financial Services Law provides the Commission with powers to investigate suspected cases of insider dealings or market manipulation and these powers can be used reciprocally when assisting an overseas supervisory authority where it is investigating a suspected case of insider dealing or market manipulation with a Jersey connection.

1214. Whilst information that it collects under the regulatory laws and Supervisory Bodies Law is “restricted information”, inter alia, the Commission is able to share information that it holds (spontaneously or upon request) with:

- a view to the investigation of a suspected offence by local or overseas law enforcement agencies, or institution of, or for the purposes of any criminal proceedings;
- the Viscount or any person for the purpose of enabling or assisting that person to exercise that person’s statutory functions in relation to a person in respect of whom the Commission has or had statutory functions; and
- an overseas regulatory authority, including any agency that has responsibility for oversight of compliance with AML/CFT requirements.

1215. In addition, the Commission is able to exercise its powers under the regulatory laws and Supervisory Bodies Law at the request of an overseas regulatory authority. These powers may be used to collect information that is not already held by the Commission and to take action against a person that is registered under the regulatory laws or Supervisory Bodies Law.

1216. Article 39 of the Supervisory Bodies Law provides for cooperation with overseas supervisory authorities. It allows the Commission (and any other designated supervisory body) to exercise the following powers to assist a supervisor:

- The power to refuse or revoke a registration under Articles 14, 15, or 18.
- Powers to attach, amend, vary, substitute or revoke any condition pursuant to Article 17.
- The power to give a direction under Article 23.
- The power to request the Royal Court to intervene under Article 25.
- Powers relating to information and documents under Article 30.
- Power to investigate under Article 31.
- Power to enter and search premises with a police officer under Article 32.

1217. In addition, Article 39 provides for the Commission to pass on any information that is in its possession – whether or not as a result of the exercise of the above powers. Similar powers are available under Article 47 of the Banking Business Law, Article 25 of the Collective Investment Funds Law, Article 33 of the Insurance Business Law, and Article 36 of the Financial Services Law.

Provision of assistance in timely, constructive and effective manner (c.40.1.1)

1218. The legislation contains no provisions regarding time limits. The Island’s competent authorities can and do provide effective assistance, including where it is made clear by the requesting authority that the matter is urgent.

FIU

1219. The JFCU Intelligence Team is the centre for receiving and answering all ML & TF related requests. Requests of intelligence are treated diligently and quickly.

1220. The JFCU has (among other databases) direct access to UK Police National Computer, Joint Asset Recovery Database, MIDAS Marine registration, Interpol Database, Europol Information system, UK Department of Work & Pension, UK Driver & Vehicle Licensing Agency, and UK Revenue & Customs databases.
1221. The Law Officers' Department has published mutual legal assistance guidelines (in English, French and Arabic) in order to set out when it is possible to provide assistance, and to facilitate the provision of such assistance in a rapid, constructive, and effective way. The guidelines deal with assistance that may be provided by the Law Officers' Department (including the mechanism for doing so), and also touch on assistance that may be provided by the JFCU and Commission.
1222. The Attorney General has also drawn up guidelines that deal with the sharing of intelligence collected by the JFCU through SARs. Under Article 34 of the Proceeds of Crime and Article 25 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law, information that is contained in a SAR can be disclosed by the JFCU outside the Island with the Attorney General's consent generally (by reference to guidelines drawn up by the Attorney General and amended from time to time), or specifically on a case-by-case basis, for the purpose of the investigation of crime outside the Island or of criminal proceedings outside the Island or to assist a competent authority outside the Island. The Attorney General may impose restrictions on the use of the information (intelligence only) and may restrict further disclosure of the information to any other person or body. The assessment team has been informed that this does not occur in practice.

Supervisory authority

1223. The Commission has published (in English, French and Arabic) a Handbook on International Co-operation and Information Exchange¹⁴⁰ to assist overseas supervisory authorities when they seek to obtain assistance from the Commission. Inter alia, information is provided on who to contact for routine enquiries and where there is a suspected breach of legislation. The mechanism for provision of assistance by the Commission is summarised at 40.1 above.

Clear and effective gateways for exchange of information (c.40.2)

FIU

1224. The JFCU is a member of the Egmont Group, and will exchange spontaneously, or on request, information and intelligence with Egmont jurisdictions. The Attorney General has given guidelines to the JFCU for responding to the requests of foreign authorities. Guidelines are drawn on the basis of the Proceeds of Crime Law Article 34 and Terrorism Law Article 25. The guidelines give broad rights to the JFCU to determine to whom and to what extent the JFCU can respond to requests.
1225. Sharing of information is on an intelligence basis. Information for evidentiary purposes has to be obtained through MLA. The Attorney General has, in both cases, the ultimate right to refuse sharing of information. There are two stages of the dissemination process: a "standard share of intelligence", which offers limited information; and an "enhanced share of intelligence" which is more detailed. In relation to 2014 received intelligence there were 2431 disseminations and of those 1971 were "standard share of intelligence" and 514 "enhanced share of intelligence". The FIU is in a position to exchange information directly with international counterparts. The JFCU is authorised by the Attorney General guidelines to respond to the enquiries at two levels. Initially, personal data, contact information and the broad nature of suspicion is shared. If the relevant enquiry indicates serious suspicion of money laundering and underlying crimes then the JFCU is permitted to share all information available.
1226. If the receiving authority wants to disclose intelligence further then the JFCU can authorize this request if the receiver is a police or customs agency or the security service and receiving country

¹⁴⁰ http://www.jerseyfsc.org/the_commission/international_co-operation/assisting-overseas.asp

is an Egmont member country. For the countries which are not Egmont members only the Attorney General can give such authorisation.

Supervisory authority

1227. As described above Jersey does not require bilateral agreements to be in place in order to cooperate internationally, nevertheless the Commission has concluded 76 bilateral memoranda of understanding with overseas regulatory authorities and is a signatory to the IOSCO and IAIS multilateral memoranda of understanding.

1228. The Commission's website contains information with respect to assisting overseas regulatory authorities. The Commission is able to co-operate with regulators in other jurisdictions and frequently does so, albeit that requests are rarely, if ever, ML/FT specific.

1229. The Commission's Director General and the Attorney General (or members of his Department) also periodically visit countries (or meet with representatives of countries) in order to explain the co-operation that Jersey is able to provide. In recent years agencies in the United States, India, the United Arab Emirates, China, Germany, Finland and the Indonesian Embassy in London has been visited.

Spontaneous exchange of information (c. 40.3)

FIU

1230. Jersey's FIU shares a lot of information with foreign counterparts. A major part of information sharing is spontaneous exchange of information. It is driven by Jersey's status as a financial centre and that most SARs include funds related to foreign countries and persons. The JFCU has taken an approach to share as much information as possible. Intelligence sharing is the main focus and each SAR with foreign connections is aimed to be shared with the relevant country's FIU. Information sharing success rate has risen from 57.9% in 2011 to 73%¹⁴¹ in 2014.¹⁴²

Intelligence not held, or other reason for non-sharing as a percentage of actions raised (a single SAR may generate multiple actions)	2011	2012	2013	2014
Case specific Human Rights concerns	0.9%	1.3%	0.1%	0.2%
No criminality identified following analysis	6.5%	3.3%	5.1%	6.0%
Non-Egmont member. No MOU or suitable intelligence exchange gateway identified	0.5%	0.1%	0.1%	0.2%
Overseas RFA requests where there is no trace of the subject of the enquiry or other nexus to Jersey. RFAs are treated as a priority and response provided in all cases	4.4%	3.6%	6.8%	5.4%
Other e.g. Counterparts already aware of intelligence	9.8%	11.3%	11.5%	9.7%
Fiscal matter. No criminality identified, not PEP related or other compounding features following analysis	20.0%	17.7%	19.4%	5.5%

Reasons for non-sharing	2011	2012	2013	2014
Human Rights concerns	2.3%	3.4%	0.3%	0.7%
No adverse feedback from research	15.4%	8.9%	11.8%	22.0%
No MOU	1.3%	0.2%	0.2%	0.9%
No trace of subjects	10.4%	9.7%	15.9%	20.3%

¹⁴¹ 73% for full year of 2014, 65% for 1-3Q of 2014.

¹⁴² 62.7% in 2012 and 57% in 2013.

Other	23.1%	30.1%	26.7%	35.6%
Attorney General Review not sought as criteria not met	47.5%	47.6%	45.1%	20.5%

1231. Statistics indicate that the Attorney General has considerable influence on intelligence sharing decisions.

Supervisory authority

1232. The Commission shares spontaneously information with foreign supervisors.

Making inquiries on behalf of foreign counterparts (c.40.4)

FIU

1233. The JFCU is authorized to assist foreign counterparts with their inquiries. The Attorney General Guidelines regulate the process of assistance.

Law enforcement authorities

1234. The Police (except from JFCU and its FIU duties) can conduct inquiries on behalf of foreign authorities only through the MLA system. All MLA related decisions to share information need the Attorney General's consent.

FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1)

1235. With the coming into force (on 11 March 2015) of the Proceeds of Crime (Financial Intelligence) Regulations the JFCU has the power to also request relevant information on the basis of requests from foreign FIU's. The Proceeds of Crime Law now addresses this situation and authorises the JFCU to reach out to any relevant person who possesses relevant information and request it. Information received through SARs can be shared according to terms set in the Attorney General Guidelines.

Supervisory authority

1236. The Commission is able to assist with inquiries (as distinct from investigations). See the description above.

Conducting of investigation on behalf of foreign counterparts (c. 40.5)

1237. The Law Officers' Department and the JFCU are able to conduct joint investigations with, or their own investigations on behalf of, counterparts according to the MLA system. All such investigations need authorisation from the Attorney General.

Supervisory authority

1238. The Commission is able to conduct joint investigations with, or their own investigations on behalf of, counterparts if they think fit, and has done this in practice.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIU

1239. As noted above, the Attorney General may impose restrictions on the use of the information (intelligence only) and may restrict the further disclosure of the information to any other person or body. The FIU operates under delegated authority and indicated that in practice, there were no known instances of intervention.

Law enforcement authorities

1240. In the case of information exchanged as part of an investigation, it is typically subject to the following conditions:

- The information is only to be used for criminal investigations or prosecutions (or civil asset recovery investigations and proceedings).
- Information remains the property of the Jersey law enforcement agencies and is not subject to onward transmission to any third party without their consent.
- Where the information is intelligence, then an application should be made for mutual legal assistance if needed for a formal investigation or prosecution.

1241. The Attorney General has a general policy that the Law Officers' Department will not provide assistance where Jersey itself would not request the help of another jurisdiction in the same circumstances on the grounds of cost and/ or seriousness. Each request is considered on its own merits but where the case involves financial prejudice, the Attorney General will be hesitant to provide assistance where the figure falls below £10,000 (or equivalent) unless there are good public policy grounds to do so. In the case of serious or complex fraud, this guideline figure is £2,000,000 (or equivalent)¹⁴³. Setting a monetary value in guidelines could inhibit foreign law enforcement authorities' requests for assistance.

1242. The authorities have indicated that this has not been a concern to date, in as far as the assistance provided by Jersey, as the threshold figures are not set in stone and can be varied in appropriate cases (for example, those cases which touch upon some particular point of public importance). In addition, it was only relatively recently that the threshold figure applied to the International Co-operation Law (£10,000) was reduced from £100,000. The figures are therefore kept under review.

1243. The threshold applied to the Fraud Law (£2 million) accords with the wording of Article 2 of the statute (serious or complex fraud). The lowest figure ever applied under the Fraud Law was £1 million – although it has been as high as £5 million. If a fraud with a prejudice figure of less than £2 million is received it can be dealt with under the International Co-operation Law in any event. Refusal on the grounds of a Request falling below a threshold figure was very rare.

Supervisory authority

1244. Article 39 of the Supervisory Bodies Law (and also Article 47 of the Banking Business Law, Article 25 of the Collective Investment Funds Law, Article 33 of the Insurance Business Law, and Article 36 of the Financial Services Law) states that the Commission shall not pass on information unless it is satisfied that:

- The relevant overseas authority will treat the information communicated with appropriate confidentiality.
- The information is being provided to assist the relevant supervisory authority in the exercise of its supervisory functions.
- The relevant overseas authority will comply with any conditions that the Commission sees fit to apply to the disclosure. According to the Jersey authorities the only condition that it is routinely applied is that the information provided must not be shared with any third party without first obtaining the permission of the Commission.

1245. In addition, in deciding whether to exchange information, the following factors may be taken into account:

- Whether corresponding assistance would be given.

¹⁴³ The Attorney General has abolished on 13 August 2015 the guideline MLA threshold, with each case being decided on its individual merits.

- Whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey.
- The seriousness of the case and its importance in Jersey.
- Whether it is otherwise in the public interest to provide assistance.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

1246. Requests for cooperation are not refused if their content is related to fiscal crimes.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1247. There is no legislation in place that imposes secrecy, and statutory “gateways” override the common law precedent of client confidentiality.

Safeguards in use of exchanged information (c.40.9)

FIU

1248. All international communication related information is kept in a JFCU secure database or in the secure system of the Law Officers’ Department. Access to foreign FIU requests is restricted to Police and Custom officers of the JFCU. All data processing is regulated by the Data Protection (Jersey) Law 2005 which also addresses provisions regarding managing of data related to the prevention and detection of crime.

Supervisory authority

1249. Article 35 of the Supervisory Bodies Law restricts the use of information provided to the Commission relating to the business or other affairs of any person. Unless there is a gateway under Article 36, a person shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine if he or she discloses the information without the consent of the person to whom it relates.

1250. Appendix B of the Handbook on International Co-operation and Information Exchange to assist overseas supervisory authorities when they seek to obtain assistance from the Commission outlines the confidentiality provisions applying to information disclosed to the Commission by an overseas regulatory authority.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.40.1)

FIU

1251. There are mechanisms for the JFCU to exchange information with non-counterparts with the consent of the Attorney General where this is consistent with Articles 34 of the Proceeds of Crime Law and Articles 24 and 25 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law.

Supervisory authority

1252. The Commission can disclose restricted information to non-counterparts in certain circumstances. The two most relevant gateways are:

- The Commission can disclose restricted information to a non-counterpart, “with a view to the investigation of a suspected offence, or institution of, or otherwise for the purposes of, any criminal proceedings, whether under [the relevant Jersey regulatory law (Financial Services Law etc)] or not”.

- The Commission can disclose restricted information, “by or to any person in any case in which disclosure is for the purpose of enabling or assistingthe Commission ... to discharge the Commission’s functions under this law or under any other enactment.”

Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1253. This will be case specific and jurisdiction specific.

Special Recommendation V (rated LC in the IMF report)

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5)

1254. The direct co-operation regime between law enforcement authorities and FIUs applies equally in FT-related matters.

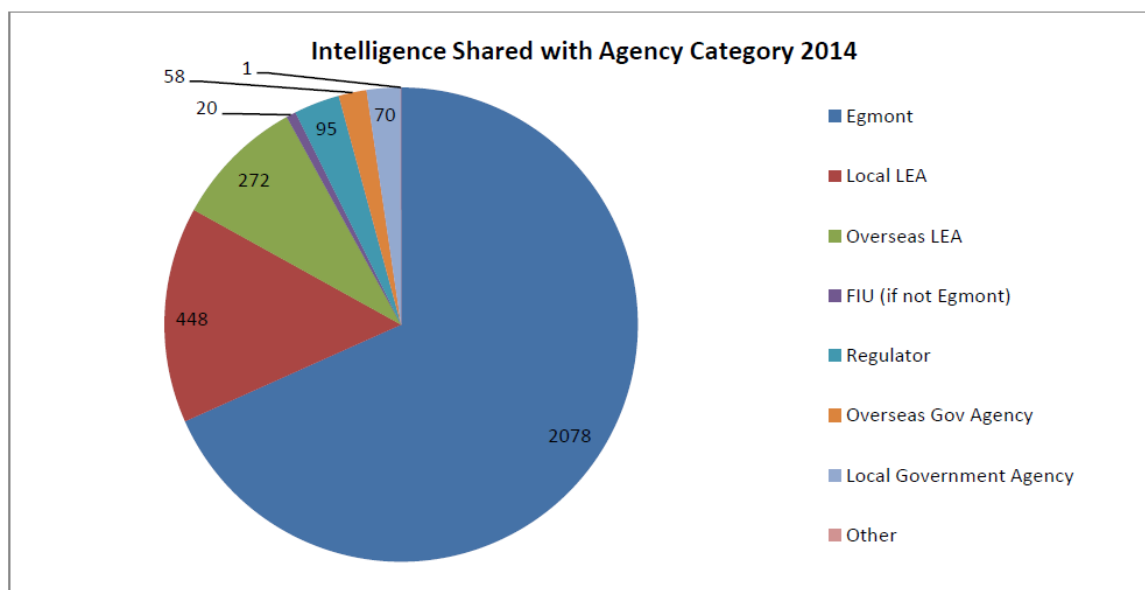
Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

Effectiveness and efficiency

1255. The JFCU and Jersey’s law enforcement authorities are able to co-operate with their foreign counterparts. This principle also includes fiscal crimes. Jersey does not have banking secrecy laws and the common law of confidentiality doesn’t prevent international co-operation. Investigations can be conducted on behalf of foreign counterparts. The Proceeds of Crime Law and Terrorism Law authorise the JFCU to share information on an intelligence basis with foreign counterparts. Legislation sets a requirement to have Attorney General’s consent for this information sharing. The Attorney General has issued guidelines which enable the JFCU to determine the level and extent of cooperation. The Attorney General may impose restrictions on the use of the information and may restrict further disclosure of the information to any other person. In practice both the Commission and the Law Officers’ Department actively engage with requesting authorities with a view to providing all relevant information rather than just providing information as requested.

1256. ML and TF related international co-operation is undertaken by the JFCU. The JFCU estimates that they have achieved approximately an 80% share rate of all incoming reports, which is a significant rise since the evaluation in 2008. In 2008 it was reported that approximately 10% of cases information was shared. Most of sharing is done abroad.



1257. The JFCU shares information overseas very actively. The Chart above shows that most intelligence is shared with other FIUs (2,098 cases of sharing in 2014). Intelligence sharing with overseas law enforcement authorities was performed in 272 cases. The figures for the period 2011 to 2014 show a gradual increase every year. The main rise compared to previous years was intelligence sharing with FIUs who are Egmont Group members. It has to be noted that statistics are provided for the JFCU which consist of an Intelligence Team (FIU), Operations Team and Drugs Team (investigative teams).

Requests to and from foreign FIU`s

	2010	2011	2012	2013	2014
Requests from foreign FIU`s	537	500	406	511	426
Requests/sharing of intelligence to foreign FIU`s and LEA`s ¹⁴⁴	N/A	3,859	3,061	3,316	3,060
Number of requests sent by JFCU to LEA only	N/A	1,190	979	1,046	793
Success rate for sharing information ¹⁴⁵	N/A	55.8%	59.6%	56.1%	74.0%

Reasons for non-sharing situations

	2010	2011	2012	2013	2014
Human Rights concerns	N/A	2.3%	3.4%	0.3%	0.7%
No adverse feedback from research	N/A	15.4%	8.9%	11.8%	22.0%
No MOU	N/a	1.3%	0.2%	0.2%	0.9%
No trace of subjects	N/a	10.4%	9.7%	15.9%	20.3%
Other	N/a	23.1%	30.1%	26.7%	35.5%
Attorney General Review not sought as JFCU criteria not met	N/a	47.5%	47.6%	45.1%	9.1%
No criminality identified ¹⁴⁶					11.5%

¹⁴⁴ All circumstances where intelligence sharing was initiated (both successful and refused situations)

¹⁴⁵ Success rate for every raised action to share intelligence.

¹⁴⁶ Introduced July 2014

1258. Although the authorities indicated that there were no instances of intervention, the statistics show the percentage of cases where the Attorney General's review was not sought on the basis of criteria set by the JFCU. This has triggered questions for the assessors with respect to situations where this could limit the effective and prompt information sharing by the FIU. The FIU provided the following statistics regarding cases where the JFCU was authorised to make a disclosure and has nevertheless requested specific agreement from the AG.

2010 – 1 case
 2011 – 4 cases
 2012 – 2 cases
 2013 – 4 cases
 2014 – 2 cases

1259. The assessment team remains of the view that the information sharing is a matter for decision by the FIU on its own.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1260. The following statistics have been provided by the Commission :

Supervisory authorities: international co-operation on AML

International co-operation	2009		2010		2011		2012		2013		2014	
ML/FT INCOMING REQUESTS												
Foreign requests received by supervisory authorities related to ML/FT specifically	16	0	19	0	16	0	22	0	19	0	16	0
<i>Foreign requests executed</i>	<i>15</i>	<i>0</i>	<i>18</i>	<i>0</i>	<i>14</i>	<i>0</i>	<i>20</i>	<i>0</i>	<i>18</i>	<i>0</i>	<i>16</i>	<i>0</i>
Average time of execution (days)	0	0	53	0	25	0	21	0	23	0	23	0
<i>Foreign requests refused</i>	<i>1</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>0</i>
AML/CFT OUTGOING REQUESTS												
Information spontaneously shared with foreign supervisory authority	15		25		30		24		13		17	
Requests sent by supervisory authorities related to AML/CFT specifically	1	0	5	0	7	0	0	0	3	0	2	0
<i>Number of requests sent and executed by foreign authority</i>	<i>1</i>	<i>0</i>	<i>5</i>	<i>0</i>	<i>7</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>3</i>	<i>0</i>	<i>2</i>	<i>0</i>
<i>Number of requests sent and refused by foreign authority</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
TOTAL	32		49		53		46		35		35	

1261. The Commission's website contains details of the number of times the Commission has responded to requests for investigatory assistance from an overseas regulatory authority. In 2013, it responded to 18 requests for assistance. In addition, the Commission regularly shares information with relevant supervisory authorities for the purpose of assisting with licensing and other supervisory functions that are not of an investigatory nature.

1262. Generally, the Commission has indicated that over the past three years the average response time from receipt of request to provision of information has been 23 days.

1263. So far the Commission did not very often request information from foreign supervisors related to AML/CFT. It has shared spontaneously information with foreign supervisors, and this has been predominantly related to cases where market manipulation or insider dealing were suspected. This raises an effectiveness concern for a jurisdiction where clients are mainly overseas, and to a certain extent terrorism financing entail substantial risks for Jersey. This is partly mitigated while

information related to tax is frequently requested and shared by the tax authorities, which also includes information regarding beneficial ownership.

1264. The Commission received and actioned requests from the following jurisdictions. The requests related mainly to Jersey registered entities and individuals using local banking facilities.

UK Financial Conduct Authority	Central Bank of Ireland	Hong Kong Securities and Futures Commission
Hellenic Capital Market Commission	Guernsey Financial Services Commission	Swedish Financial Supervisory Authority
Israel Securities Commission	US Commodity Futures Trading Commission	Austrian Financial Markets Authority
Ontario Securities Commission	Capital Markets Authority (Kenya)	Netherlands Authority for Financial Markets
Commissione Nazionale per le Società e la Borsa (CONSOB) (Italy))	Securities and Exchange Surveillance Commission (Japan)	New Zealand Securities Commission
Banking, Finance and Insurance Commission (CBFA) (Belgium)	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Central Bank of Curacao
Australian Securities and Investments Commission	French Autorité des marchés financiers (French AMF)	Komisja Nadzoru Finansowego (KNF) (Poland)

1265. The Commission has requested information from the following supervisory authorities. The information requests were in respect of individuals (5), entities (9) and collective investment funds (4).

Central Bank van Aruba	UK Financial Conduct Authority	Financial Services Commission, Mauritius
US Securities and Exchange Commission	Bermuda Monetary Authority	Hong Kong Securities and Futures Commission
Comisión Nacional del Mercado de Valores (CNMV) (Spain)	British Virgin Islands Financial Services Commission	Isle of Man Financial Supervision Commission
Cayman Islands Monetary Authority	Guernsey Financial Services Commission	

1266. The table below gives also an overview of other than AML information requested from or sent to overseas authorities:

Channels	Description	Requests from overseas authorities/spontaneous provision of information	JFSC Requests to overseas authorities
Regulatory Colleges and similar (Banking, TCB and FSBs)	Organised meetings of regulators from different jurisdictions to share insight into one or more regulated persons.	13	
Annual Home Regulator letters or meaningful contact	Formal letters to home supervisors to inform them of levels of compliance of connected subsidiaries or branches in Jersey. Can include the provision of	13	

	onsite visit reports etc.		
Host regulator meaningful contact	When Jersey acts as an intermediate home regulator, it exchanges reports, highlights material issues, conditions applied etc.	5 (banking)	
Shared Intelligence Service (“SIS”)	System which permits group of 26 regulatory authorities (and other data sources) to share adverse information on individuals and legal persons.	643	857
Overseas Regulatory requests	Requests for information from/to overseas regulatory authorities (not part of SIS).	65	144
Registry – Information Exchange re: Tax Authorities	Under the provisions of Regulation 3 of the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 the Commission is required to deliver to the Competent Authority information which is in the Commission’s possession, custody and control.	23	
Registry – Seeking regulatory references upon incorporation	As part of the assessment of Jersey holding companies, where the underlying company conducts a regulated financial activity, the Registry will approach the relevant international regulator for a regulatory reference. Also includes SIS checks on Debt Issuing Companies (SPVs).		142

6.4.2 Recommendation and comments

Recommendation 40

FIU

1267. The current set up needs to be analysed in order to ensure that the FIU has a clear mandate to decide solely on information sharing, without any involvement of other counterparts.

1268. Authorities should also address the situation related to the high number of non-sharing decisions.

Supervisory authority

1269. The Commission should continue to proactively support international co-operation on regulation and supervision of financial institutions and DNFBPs, and in particular as regards AML/CFT.

Special Recommendation V

1270. This recommendation is met.

6.4.3 Compliance with Recommendation 40 and SR V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	LC	<ul style="list-style-type: none"> The FIU is authorised to make disclosures to foreign FIUs on the basis of a delegated authority from the AG. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The Commission did not very often request information from foreign supervisors related to AML/CFT. This is an effectiveness concern for a jurisdiction where clients are mainly overseas, and considering the ML and FT risks involved, though these are partly mitigated by the fact that information related to tax is frequently requested and shared, which also includes information regarding beneficial ownership.
SR.V	C	

7 OTHER ISSUES

7.1 Resources and Statistics

1271. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report only contains the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	LC¹⁴⁷ (consolidated rating)	For the FIU <ul style="list-style-type: none"> The allocation of resources within the Police has impacted from time to time the FIU's implementation of its core functions.
R.32	LC (consolidated rating)¹⁴⁸	<ul style="list-style-type: none"> It was not demonstrated that the review of the effectiveness of the AML/CFT system has covered all aspects of the AML/CFT system.

7.2 Other Relevant AML/CFT Measures or Issues

7.3 General Framework for AML/CFT System (see also section 1.1)

¹⁴⁷ The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on resources, integrity and training of law enforcement authorities and prosecution agencies.

¹⁴⁸ The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 20, 27, 38,39 and SR.IX.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to the UK Crown Dependency of Jersey. *It includes ratings for FATF Recommendations from the IMF report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating ¹⁴⁹
Legal systems		
1. Money laundering offence	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> ML cannot be tried together with a customary law offence; Overall effectiveness concerns given the relatively limited number of money laundering cases (especially third party ML of proceeds generated from foreign criminality) considering the size and characteristics of Jersey's financial sector as an international financial centre.
2. <i>Money laundering offence Mental element and corporate liability</i>	C	
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> "value confiscation" of criminal assets given as gifts is limited; Gaps identified with respect to the confiscation/provisional measures regime. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> Overall effectiveness concerns given the relatively limited amounts of property seized and confiscated and considering the size and characteristics of Jersey's financial sector and

¹⁴⁹ These factors are only required to be set out when the rating is less than Compliant.

		its status as an international financial centre.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	LC	<ul style="list-style-type: none"> Some activities are exempted to be considered financial activities although the risk is not always proved to be low. <p><u>Recommendation 5</u></p> <ul style="list-style-type: none"> While applying simplified measures, under some circumstances, certain elements of the CDD can be exempted, rather than reduced. This is especially relevant in business relations with collective investment schemes with limited number of investors. No obligation to verify authorisation of the person acting on behalf of the customer while applying simplified identification measures. (Article 18 case 3). <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> At the time of the onsite visit, some FIs limited the scope of identifying the beneficial owner to the person having a material interest only; Notwithstanding the mitigating measures, application of SCDD when the customer is a DNFBP from another jurisdiction has a risk given that the latter may not be subject to the same degree of regulation and supervision; FIs are not required, in relevant circumstances, to obtain a copy of the trust deed and/or letter of wishes, or take any other appropriate measure.
6. Politically exposed persons	LC	<ul style="list-style-type: none"> Implementation of latest requirements for PEPs not yet fully effective in some financial institutions.
7. Correspondent banking	C	
8. New technologies and non face-to-face business	LC	<ul style="list-style-type: none"> Limited guidance on specific ML and FT risks of new technologies, including in relation to e-money and e-commerce.
9. Third parties and introducers	PC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> Where the controlling element concerning the identification of BO is limited by certain Jersey financial institutions that are placing reliance on other financial institutions, this has a

		<p>negative impact on the effective application of Recommendation 9;</p> <ul style="list-style-type: none"> • The risks posed by appendix B¹⁵⁰ listed jurisdictions, where the obliged person is situated, is not always taken into consideration before placing reliance; • The collection of CDD information and documentation through third parties (especially through a chain of third parties) without applying the formal reliance requirements raises concerns.
10. Record keeping	C	
11. Unusual transactions	C	
12. DNFBPS – R.5, 6, 8-11 ¹⁵¹	LC	<ul style="list-style-type: none"> • Some DNFBP activities are exempted from the application of AML/CFT measures although the risk is not always proved to be low. <p><i>Applying Recommendation 5</i></p> <ul style="list-style-type: none"> • Deficiencies related to simplified identification measures described under Recommendation 5 are also applicable to DNFBPs. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> • At the time of the visit, some TCSP limited the scope of identifying the beneficial owner to the person having a material interest only; • Awareness of the real estate agencies was not found to be adequate; • Awareness of potential high value dealers in respect to their potential AML/CFT obligations was not assessed by the evaluation team. <p><i>Applying Recommendation 9</i></p> <ul style="list-style-type: none"> • Deficiencies identified under Recommendation 9 are also applicable to DNFBPs.

¹⁵⁰ Appendix B of the AML/CFT Handbook provides for a non-exhaustive list of countries and territories that are considered to be “equivalent jurisdictions” and that the Commission considers to have set requirements that are consistent with those in the FATF Recommendations - for the purposes of applying simplified identification measures under Articles 17 and 18 and for placing reliance on third parties under Article 16. The list in place at the time of the evaluation visit included:

-FATF Members: Australia, Japan, Austria, Luxembourg, Belgium Netherlands (excluding Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten), Canada, New Zealand, Denmark, Norway, Finland, Portugal, France, Singapore, Germany, South Africa, Greece, Spain, Hong Kong, Sweden, Iceland, Switzerland, Ireland, United Kingdom, Italy, United States:

-EU/EEA Members (which are not also FATF members): Bulgaria, Lithuania, Cyprus, Malta, Czech Republic, Poland, Estonia, Romania, Hungary, Slovakia, Latvia, Slovenia, Liechtenstein, Gibraltar (through the UK)

-Crown Dependencies and overseas territories: Guernsey, Isle of Man, Cayman Islands.

¹⁵¹ The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 6, 8 and 11.

13. Suspicious transaction reporting	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The performance of the SAR regime is impacted by issues related to quality of SARs received and reporting patterns where not all reports are initiated by institutions during detection of suspicious activities.
14. Protection and no tipping-off	C	
15. <i>Internal controls, compliance and audit</i>	LC	<ul style="list-style-type: none"> <i>There is no requirement in law, regulation, or other enforceable means expressly covering AML/CFT to maintain an adequately resourced and independent audit function (having regard to the size and nature of the business);</i> <i>The current requirement for timely information access for compliance officers, though drafted in broad terms, is not sufficiently detailed.</i>
16. DNFBPS – R.13-15 & 21 ¹⁵²	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The performance of the SAR regime is impacted by issues related to the quality of SARs received and level of awareness of reporting entities on the scope of the FT reporting; Low level of understanding of reporting requirements in the real estate sector.
17. Sanctions	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> Administrative fines have recently been added to the range of sanctions available. Its effective use could not be assessed.
18. <i>Shell banks</i>	C	
19. <i>Other forms of reporting</i>	C	
20. <i>Other DNFBPS and secure transaction techniques</i>	C	
21. <i>Special attention for higher risk countries</i>	LC	<ul style="list-style-type: none"> <i>Power to use countermeasures restricted by its dependence on FATF actions.</i>
22. <i>Foreign branches and subsidiaries</i>	LC	<ul style="list-style-type: none"> <i>No explicit requirement in law, regulation, or other enforceable means for particular attention to the need to apply AML/CFT measures at least equivalent to those in Jersey in the cases of branches or subsidiaries in</i>

¹⁵² The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 15 and 21.

		<i>countries that do not or insufficiently apply the FATF Recommendations.</i>
23. Regulation, supervision and monitoring	LC	<p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> • Certain exemptions and cases of SDD did not attract sufficient attention in the supervisory approach of the Commission; • The £300,000 threshold applied to the MSBs is considered to be high in light of the supervisory activity applied so far to these entities; • In one particular case the supervision carried out by the Commission appeared to have been unduly reliant on the supervision carried out by a foreign supervisor.
24. DNFBPS - Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> • <i>Requirements for certain DNFBPs are new and their implementation was incomplete at the time of the assessment.</i>
25. Guidelines and Feedback	C	
Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> • Concerns regarding the autonomy of the FIU within the Police, given its recognition in law, its current positioning within the Police's overall structure and its rotational practice, and the AG's role with respect to disclosures to foreign FIUs; • Only two reports on typologies and trends have been issued in a timeframe of 7 years. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> • the FIU's power to obtain new information from reporting entities, rather than additional information from those that had submitted a SAR, was introduced after the visit and the effectiveness of its implementation could not be demonstrated.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • <i>The JFCU should be adequately staffed to perform its investigative function effectively.</i>
28. Powers of competent authorities	C	
29. Supervisors	C	

30. Resources, integrity and training ¹⁵³	LC (consolidated rating)	For the FIU <ul style="list-style-type: none"> The allocation of resources within the Police has impacted from time to time the FIU's implementation of its core functions.
31. National co-operation	C	
32. Statistics ¹⁵⁴	LC (consolidated rating)	<ul style="list-style-type: none"> It was not demonstrated that the review of the effectiveness of the AML/CFT system has covered all aspects of the AML/CFT system.
33. Legal persons – beneficial owners	LC	<ul style="list-style-type: none"> The information collected on UBOs in respect of customary law partnerships is not fully in line with the definition of UBO in the Money Laundering Order; Measures to prevent unlawful use of incorporated associations that do not fall under the Companies Law, other product laws, COBO and the Financial Services Law. This risk though is partly mitigated by Loi 1862 but does not have adequate specific obligations regarding direct or indirect UBOs. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The information collected on UBOs in the COBO is focussing on the material element, not on the control element. The guidance to the application form was also not fully clear in this respect but has been changed and issued as of 24 March 2015; Judiciary scrutiny of the Foundations Law has revealed legal gaps, which have led to legal changes by 24 March 2015, although their effectiveness cannot be demonstrated.
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> Inadequate measures to ensure that accurate, complete and current beneficial ownership information is also available for trusts administered by any trustees not covered for family trusts or administered by PTCs; <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> At the time of the visit, there was no obligation for the trustee to identify and verify the identity of any person exercising ultimate effective

¹⁵³ The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on resources integrity and training of law enforcement authorities.

¹⁵⁴ The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 20, 27, 38,39 and SR.IX.

		control over the trust who was not a settlor, protector or beneficiary. The recent changes in the Money Laundering Order and the Handbook for Regulated Financial Services Business to address this aspect have recently entered into force (24 March 2015) and its effectiveness could not be assessed.
International Co-operation		
35. Conventions	LC	<ul style="list-style-type: none"> Not all provisions of the Palermo and Vienna Conventions are fully implemented. (shortcomings with respect to R 3.)
36. Mutual legal assistance (MLA) ¹⁵⁵	LC	<ul style="list-style-type: none"> Deficiencies with regard to seizure and confiscation of corresponding value identified with regard to R.3 may hamper effective MLA. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The monetary threshold could have inhibited countries from requesting MLA assistance
37. Dual criminality	C	
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> For certain money laundering offenses, seizing and confiscation measures are not available for all types of property as required by the FATF Recommendations. Deficiencies in the ML criminalization affect the MLA capacity where the dual criminality principle applies.
39. Extradition	LC	<ul style="list-style-type: none"> Deficiencies in the ML criminalization affect the extradition capacity due to the application of the dual criminality principle.
40. Other forms of co-operation	LC (consolidated rating)	<ul style="list-style-type: none"> the FIU is authorised to make disclosures to foreign FIUs on the basis of a delegated authority from the AG. <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> The Commission did not very often request information from foreign supervisors related to AML/CFT. This is an effectiveness concern for a jurisdiction where clients are mainly overseas, and considering the ML and FT risks involved, though these are partly mitigated by the fact that information related to tax is frequently requested and shared, which also includes information regarding beneficial ownership.

¹⁵⁵ The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendation 28.

Nine Special Recommendations				
SR.I	Implement UN instruments		LC	<ul style="list-style-type: none"> The shortcomings identified with regard to R.3, especially with regard to the scope of provisional measures, could hamper action taken against funds with regard to SR.III whenever this involves criminal proceedings regarding assets belonging to terrorist organisation designated under UNSCR 1373 or mutual legal assistance requests regarding such assets.
SR.II	Criminalise terrorist financing		LC	<ul style="list-style-type: none"> The use of lawful property for Terrorist financing purposes is an offence under Jersey law but not a predicate offence to money laundering when not involving “criminal property” as defined. <p>Effectiveness:</p> <ul style="list-style-type: none"> As it has not been tested in practice, it remains unclear whether financing a “proscribed organization” (Part 2 of the Terrorism Law) would be covered under Article 15 of the Terrorism Law.
SR.III	Freeze and confiscate terrorist assets		LC	<p>Effectiveness:</p> <ul style="list-style-type: none"> Shortcomings identified with regard to R.3 might hamper effectiveness; Concerns about the immediate communication of UN designations and thus the effectiveness of the freezing regime.
SR.IV	Suspicious transaction reporting		LC	<p>Effectiveness:</p> <ul style="list-style-type: none"> The performance of the SAR regime is impacted by gaps in guidance and training for reporting entities on the scope of the FT reporting.
SR.V	International co-operation ¹⁵⁶		C (consolidated rating)	
SR.VI	AML requirements for money/value transfer services		LC	<ul style="list-style-type: none"> Additional training and experience needed for full effective implementation.
SR.VII	Wire transfer rules		LC	<ul style="list-style-type: none"> Liberal interpretation by financial institutions of the risk-based approach in dealing with

¹⁵⁶ The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 37, 38 and 39.

		<i>incoming wire transfers that lack full originator information.</i>
<i>SR.VIII Non-profit organisations</i>	<i>C</i>	
<i>SR.IX Cross Border declaration and disclosure</i>	<i>LC</i>	<ul style="list-style-type: none"> • <i>Not yet possible to demonstrate effectiveness of newly-established system to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing.</i>

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	<p>The authorities should :</p> <ul style="list-style-type: none"> • Amend the law so that the definition of “criminal property” covers property obtained through the commission of an offence also in cases where the property is not proceeds of crime derived from criminal conduct. • Change criminal procedures to enable joint prosecution of customary law offences (e.g. obstruction of justice) together with statutory offences such as money laundering.
2.2 Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • Jersey should change criminal procedures to enable joint prosecution of customary law offences (eg. Obstruction of justice) together with statutory offences, such as terror financing. • Jersey should consider the UK POCA definitions of property in sections 340(10)(a) and (d) as they contain useful clarifications which may be of value in Jersey. • No terror financing cases have so far been investigated or prosecuted, even though several SARs have been found to be TF – related (which is unsurprising, considering the risk posed by the extent of financial services offered by Jersey financial institutions and DNFBPS in various high risk areas). The Jersey authorities are encouraged to take a close look at this sensitive issue and examine the possibilities of enhancing the effective investigation of such suspicions.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • Amend the Proceeds of Crime Law to: a) include 'previous conduct' provisions akin to those found in the 2002 UK Act to enable freezing and b) enable confiscation of gifts made in general or specifically into a trust that were made before the relevant criminal offending. • Amend the Proceeds of Crime Law to include a definition of who is “beneficially entitled”. • Amend the law to further the ability of temporary seizure of trust assets (e.g. in cases where an offender is one of the beneficiaries, when gifts or other suspicious orders are made). • Consider the utility of introducing a non-conviction based confiscation regime to apply in parallel with the conviction-based confiscation system.
2.4 Freezing of funds used for	<ul style="list-style-type: none"> • The Jersey authorities should minimise delays in

terrorist financing (SR.III)	communicating UN designations.
2.5 The Financial Intelligence Unit and its functions (R.26)	<p>Recommendation 26</p> <ul style="list-style-type: none"> • The FIU regulations should address in more detail the FIU's core functions and also its discrete responsibilities within the Police structure, thereby increasing its status, its operational independence and autonomy, and powers. • Jersey authorities should make additional efforts in order to ensure that reports identifying money laundering and terrorist financing trends and patterns are issued on a more frequent basis. • The authorities should consider conducting a review to determine the reasons why those disseminations have led to so few prosecutions.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	
2.7 Cross Border Declaration or Disclosure (SR.IX)	
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5)	<p>Recommendation 5</p> <ul style="list-style-type: none"> • Authorities should review again the nine activities exempted from Schedule 2 of the Proceeds of Crime Law to ensure that the application of the exemptions from AML/CFT should not be extended to activities whose low risk has not been proved. In such cases, Jersey authorities should seek other solutions, if appropriate (e.g. consider application of: Article 16 of the Money Laundering Order, partial exemptions, or others). • Authorities should amend the Money Laundering Order regarding simplified identification measures. A discretion to refrain from any minimum identification as established under Article 18 of the Money Laundering Order is not permitted under the FATF Recommendations although it is widely applied in other jurisdictions as well. This is particularly relevant when the customer is a collective investment scheme, therefore, when the CIS has a limited number of investors, the discretion to refrain from the identification measures should not be permitted. • The assessors acknowledge the amendments to the relevant provisions of the AML/CFT Handbooks with regard to the definition of the beneficial owner of trusts after the on-site visit. However authorities should ensure that FIs are effectively implementing CDD requirements of the beneficial owner irrespective of the material interest

	<p>where effective control may be exercised.</p> <ul style="list-style-type: none"> • Authorities should ensure that FIs effectively apply the recently amended ECDD measures of the AML/CFT Handbooks according to the degree of risk in each business relationship, and provide any additional guidance as necessary. • Financial institutions should be required to either ask for documents, such as the letter of wishes, to determine who the ultimate controlling beneficial owner is or to receive appropriate assurance and keep evidence that relevant documents (such as the letter of wishes) do not contain contradictory information with other used sources, both at the start of the relationship and during the process of ongoing due diligence.
3.3 Third parties and introduced business (R.9)	<p>In light of the effectiveness concerns identified by the assessment team, the authorities should:</p> <ul style="list-style-type: none"> • Amend the Handbook for Regulated Financial Services Business to require relevant persons to obtain CDD evidence from obliged persons within at least 2 working days; • Clarify in guidance whether financial institutions may obtain CDD information and documentation from third parties without applying the reliance provisions; • Clarify the requirement for financial institutions to take into consideration FATF/IMF assessments when assessing the risk posed by the country in which the obliged person is situated and monitor this issue in more depth • The combination of the before described elements of less awareness of risks related to the regulatory situation of introducers (TCSPs, lawyers, accountants), the lack of clarity on additional work in situations where files are presented (formally non reliance situations) and such a chain of intermediaries would present a high risk. Additional guidance from the Commission would be beneficial for the above described situations to raise awareness, strengthen effective implementation and support a level playing field. • Four exemptions as currently used are basically situations where reliance is placed on third parties, but without following the guidelines as described in the Handbook for Regulated Financial Services Business for placing reliance. This leads to less assurance. The recommendation is therefore to remove the exemption and allow financial institutions which are currently exempt in those situations from conducting CDD measures to apply the reliance provisions under Article 16 of the Money Laundering

	Order or seek other solutions.
3.4 Financial institution secrecy or confidentiality (R.4)	No recommendations
3.5 Record keeping and wire transfer rules (R.10)	No recommendations
<i>3.6 Monitoring of transactions and relationships (R.11 & 21)</i>	
3.7 Suspicious transaction reports and other reporting (R.13,14 & SR.IV)	<ul style="list-style-type: none"> • The FIU is encouraged to undertake periodical sector reviews of the numbers and quality of SARs and communicate feedback to the sectors concerned seeking to improve the quality and type of disclosures. • Part of SARs are generated by liaison notice system and, at the time of the onsite visit, by the approach used by the FIU to obtain additional information without previous SAR (practice which was utilised even after introducing the power to obtain information officially by FIU). Those practices generate ~10% of reports from all SAR's. Authorities should use their rights granted by the legislation to obtain financial information with the aim to minimize SAR's triggered by authorities and to avoid distortions in statistics. • The FIU should also consider if modifications to the electronic submission form could address some of the quality concerns identified. • Authorities should also address gaps in guidance and training for reporting entities, including also on FT related aspects, seeking to improve the performance and value of the SAR reporting regime.
<i>3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)</i>	
<i>3.9 Shell banks (R.18)</i>	
3.10 The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17)	<p>Recommendation 23</p> <ul style="list-style-type: none"> • The scope of the exemptions should be revised to cover all activities covered by the FATF's definition of financial institution. • The supervisory strategy should devote appropriate attention to the use of the exemptions under Schedule 2, the use of concessions under Article 18 (SDD) and Money Service Business. • The registration requirements, the level of the threshold and associated supervision conducted with regard to the MSBs whose turnover is less than £300,000 should be reviewed to address the identified concerns. • The authorities are recommended to ensure that the

	<p>Commission's existing policy statement on cross-border supervision of banks is effectively implemented, in turn to ensure that the supervision of any Jersey banks with operations off the island is appropriately calibrated to the ML/FT risks assessed, including those posed by the relative equivalence of the host jurisdiction."</p> <p>Recommendation 17</p> <ul style="list-style-type: none"> The authorities should monitor the use of the recently added administrative sanctions to the overall package.
<i>3.11 Money or Value Transfer Services (SR.VI)</i>	
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> Authorities should review the eight activities exempted from Schedule 2 of the Proceeds of Crime Law (specially related to TCSPs related services) to ensure that the application of the exemptions from AML/CFT should not be extended to activities whose low risk has not always been proved. In such cases, Jersey authorities should seek other solutions, if appropriate (e.g. consider application of: Article 16 of the Money Laundering Order, partial exemptions, or others). <p>Applying Recommendation 5</p> <ul style="list-style-type: none"> Simplified identification measures applied by some DNFBPs go beyond the requirements of the FATF Recommendations. Authorities should ensure that DNFBPs effectively apply the recently amended ECDD measures of the AML/CFT Handbooks according to the degree of risk in each business relationship. Adequate knowledge of AML/CFT obligations by real estate agents was not demonstrated. More awareness-raising initiatives should target the DNFBP sector. Jersey authorities should take adequate measures to ensure that auditors understand the relation between enhanced due diligence and high risk customers. <p>Applying Recommendation 9</p> <ul style="list-style-type: none"> Jersey should take appropriate measures, to address the shortcoming identified with respect to the implementation of R. 9 requirements.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> Jersey authorities are recommended to continue their efforts to increase the effectiveness of the reporting regime by DNFBPs and the level of awareness of reporting

	entities, including by undertaking sectoral reviews of the performance of the reporting regime, and developing further sectoral guidance and red flags to support SAR reporting, as appropriate.
<i>4.3 Regulation, supervision and monitoring (R.24-25)</i>	
<i>4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)</i>	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Authorities are recommended to take measures to strengthen awareness raising regarding specifically the control element of beneficial ownership to assure that institutions do not solely focus on the material element. • Authorities are recommended to take additional measures to prevent unlawful use of incorporated associations. Those measures should include specific obligations regarding direct and indirect UBOs. • Authorities are recommended to include in the Control of Housing and Work (Jersey) Law 2012 or guidance published thereunder a definition of ultimate beneficial owner which is in line with the definition of the UBO in the Money Laundering Order. • Authorities are recommended to amend the Companies Law and expressly prohibit the issuance of bearer shares. • Authorities are recommended to consider a more frequent updating of the publically available register than once a year to assure up to date information effectively.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Recent court cases revealed the importance that the ‘letter of wishes’ could have in determining who might in practice be the controller. We would recommend therefore that the Jersey authorities require financial institutions to either ask for documents, such as the letter of wishes, to determine who the ultimate controlling beneficial owner is or to receive appropriate assurance and to keep evidence that relevant documents (such as the letter of wishes) do not contain contradictory information with other used sources, both at the start of the relationship and during the process of ongoing due diligence. Jersey authorities should also provide guidance on this issue. • Jersey authorities are recommended to bring the family trusts under the Money Laundering Order. • Jersey authorities are recommended to enhance awareness raising of the most recent changes in the Handbook for

	<p>Regulated Financial Services Business regarding beneficial ownership.</p> <ul style="list-style-type: none"> Given the significant amount of assets held through trusts in Jersey, the authorities should review the eight activities exempted from Schedule 2 of the Proceeds of Crime Law (specifically related to TCSPs related services) to ensure that the application of the exemption from AML/CFT should not be extended to activities whose low risk has not always been proven.
<i>5.3 Non-profit organisations (SR.VIII)</i>	
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31 and 32)	<p>Recommendation 31</p> <ul style="list-style-type: none"> The framework for co-operation and coordination on AML/CFT issues is strong. Jersey should continue enhancing inter-agency co-operation in support of AML/CFT efforts, notably between the FIU and the JFSC, with a view to developing further the information sharing and exchanges related to ML/TF risks within the jurisdiction and the level of compliance with AML/CFT requirements by the entities subject to supervision by the JFSC. <p>Recommendation 32</p> <ul style="list-style-type: none"> Considering the recently implemented changes to the AML/CFT criminal and regulatory framework, Jersey should undertake, at appropriate times, a comprehensive review of the effectiveness of its AML/CFT system and deepen its assessment of the effectiveness of its core elements.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>Recommendation 35</p> <ul style="list-style-type: none"> The authorities should ensure that all provisions of the Palermo and Vienna Conventions are fully implemented. <p>Special Recommendation I</p> <ul style="list-style-type: none"> The authorities should take measures to address the outstanding shortcomings.
6.3 Mutual Legal Assistance (R.36 & SR.V)	<p>Recommendation 36</p> <ul style="list-style-type: none"> Amend the law to correct the deficiencies with regard to seizure and confiscation of corresponding value.
<i>6.4 Extradition (R.37 & 39, SR.V)</i>	
6.5 Other Forms of Co-operation (R.40 & SR.V)	<p><u>FIU</u></p> <ul style="list-style-type: none"> The current set up needs to be analysed in order to ensure

	<p>that the FIU has a clear mandate to decide solely on information sharing, without any involvement of other counterparts.</p> <ul style="list-style-type: none"> • Authorities should also address the situation related to the high number of non-sharing decisions. <p><u>Supervisory authority</u></p> <ul style="list-style-type: none"> • The Commission should continue to proactively support international co-operation on regulation and supervision of financial institutions and DNFBPs, and in particular as regards AML/CFT.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<p><i>Recommendation 30</i></p> <ul style="list-style-type: none"> • A regular review of allocated resources to the FIU should be undertaken in order to assess their overall adequacy. It is also suggested to reconsider the rotational practice, as the work of small units such as the FIU can be remarkably impacted by such employments. • Current situation with respect to the FIU's current positioning within the Police and the fact that the regulations define the JFCU as the FIU, although in practice it is one sub-department of the JFCU, raises some concerns and needs to be analysed by the authorities. • Considering the information provided in respect of outgoing MLA requests, and the international nature of the business, Jersey is urged to further enhance the capacity of the relevant authorities to successfully investigate suspicions of domestic money laundering originating from SARs, foreign FIU inquiries or MLA requests.
7.2 Other relevant AML/CFT measures or issues	No recommendations
7.3 General framework – structural issues	No recommendations

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

Jersey welcomes this report by MONEYVAL and thanks the Secretariat and the assessment team for their thorough and diligent work in preparing the report. Jersey has been an active participant in MONEYVAL since joining in 2012, both through attending MONEYVAL plenary sessions and providing assessors for mutual evaluations of other jurisdictions. Jersey was also pleased to confirm our commitment to an early mutual evaluation report upon joining MONEYVAL.

The publication of the report is an important milestone in the relationship between Jersey and MONEYVAL and the insular authorities welcome the conclusions of MONEYVAL that Jersey is a well-established international finance centre with a mature and sophisticated AML/CFT regime. The insular authorities also particularly welcome the comments made in the report that *“Jersey’s combination of a central register of the UBO with a high level of vetting/evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency.”* However, the insular authorities also take note of the findings of the report and the recommendations made by the assessment team.

The insular authorities in Jersey are committed to the continual enhancement of the AML/CFT framework and have confirmed that Jersey intends to implement the requirements of the 2012 FATF Recommendations, as is the policy in relation to all international standards.

The insular authorities in Jersey intend to take into account the Recommendations of the Report, along with the transposition of the 2012 FATF Recommendations, as part of the process for enhancing the framework and ensuring that it is as effective as possible. Jersey will be producing and publishing an action plan concerning the MONEYVAL report and this will be updated from time to time.

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

The Bailiwick of Jersey is not a member country of the European Union. It is not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: “the Directive”) and the **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.**

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	Corporate Liability
<i>Art. 39 of the Directive</i>	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
<i>FATF R. 2 and 17</i>	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
<i>Key elements</i>	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
<i>Description and Analysis</i>	<p><u>Criminal Liability</u></p> <p>Criminal liability for ML/TF extends to legal persons, as the provisions of the Proceeds of Crime Law and of the Terrorism law apply to any “person” without differentiating between legal and natural persons.</p> <p>In general, a corporation is in the same position in relation to criminal liability as a natural person and, subject to limited exceptions¹⁵⁷, may be convicted of criminal offences, including ML/TF offences. For offences requiring <i>mens rea</i>, 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 company¹⁵⁸, 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</p>

¹⁵⁷ 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.

¹⁵⁸ See *Federal Republic of Brazil v Durant International* 2012 (2) JLR 356 paras 45-54

	<p>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.</p> <p>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 <i>Meridian, Global Funds Management Asia Ltd v Securities Commission</i>¹⁵⁹ 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.</p> <p>Corporate criminal liability does not prejudice the criminal liability of the individuals concerned¹⁶⁰ nor the imposition of civil or administrative sanctions on the corporation.</p> <p><u>Civil Sanctions</u></p> <p>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:</p> <ul style="list-style-type: none"> • Article 10 of that Law (prohibiting unauthorized specified business); • Any condition placed on registration; • Any direction given; or • The Money Laundering Order. <p>Article 24(2) of the Supervisory Bodies Law allows the Court to make an order requiring steps to be taken to remedy a contravention.</p> <p>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, transact supervised business with the relevant person.</p> <p><u>Administrative Sanctions</u></p> <p>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</p>
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¹⁵⁹ [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

¹⁶⁰ See *AG v Caversham & Bell* [2005] JRC 165, where both the corporate body and an individual director were convicted.

	<p>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 carrying on regulated business (“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 person carrying on regulated business 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.</p> <p>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.</p> <p>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).</p> <p>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, <i>inter alia</i>, 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, <i>inter alia</i>, 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:</p> <ul style="list-style-type: none"> • Article 10 of the Supervisory Bodies Law (unauthorised business); • Any condition placed on registration; • Any direction given; • Any Code of Practice that applies to a person; or • The Money Laundering Order. <p>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 person carrying on regulated</p>
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	<p>business.</p> <p>The Financial Services Commission (Jersey) Law 1998 has been amended to provide the Commission with the power to apply administrative financial penalties to type B and C relevant persons that breach a Code of Practice that applies to them.</p>
<i>Conclusion</i>	Natural and legal persons can be held liable for ML/TF and AML/CFT infringements in application of the AML/CFT legal framework. As regards the other range of sanctions applied for AML/CFT infringements, an analysis is set out under R.17 of this report.
<i>Recommendations and Comments</i>	The requirement is implemented. Corporate liability is extended beyond the ML offence to infringements which are based on AML/CFT requirements.

2.	Anonymous accounts
<i>Art. 6 of the Directive</i>	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
<i>FATF R. 5</i>	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
<i>Key elements</i>	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
<i>Description and Analysis</i>	<p>Article 23B of the Money Laundering Order states that a relevant person must not set up an anonymous account or an account in a name which it knows, or has reasonable cause to suspect, is fictitious. Article 13 of the Money Laundering Order requires identification measures to be applied to existing customers (those accounts established before the Money Laundering Order came into force) at times that are appropriate having regard to the degree of risk of ML and FT. To the extent that any anonymous accounts or fictitious accounts existed before 4 February 2008 (a remote possibility), remedial measures will have been applied. Also see the text at criterion 5.1 of Recommendation 5 in the evaluation report.</p> <p>The legislation does not address the existence of numbered accounts and there is no reference in any other secondary legislation. According to the authorities a limited amount of numbered accounts do exist and are used for security reasons, however they are maintained in such a way as to comply with the Money Laundering Order and other legal requirements.</p>
<i>Conclusion</i>	Although anonymous accounts or accounts in fictitious names are prohibited in Jersey, the legislation makes no reference to the use of anonymous passbooks. However, according to the Jersey authorities there are no passbooks in their

	financial system, therefore the concept of “accounts” would also include passbooks.
<i>Recommendations and Comments</i>	This requirement is implemented.

3.	Threshold (CDD)
<i>Art. 7 b) of the Directive</i>	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions <u>amounting</u> to EUR 15 000 or more.
<i>FATF R. 5</i>	Financial institutions should undertake CDD measures when carrying out occasional transactions <u>above</u> the applicable designated threshold.
<i>Key elements</i>	Are transactions and linked transactions of EUR 15 000 covered?
<i>Description and Analysis</i>	<p>Article 13(1)(a) of the Money Laundering Order requires the application of CDD measures before carrying out a “one-off transaction” equal to or above the threshold of EUR 15,000 (except for money service business where the threshold is EUR 1,000 or more, and for casino business EUR 3,000 or more).</p> <p>Article 4 of the Money Laundering Order broadly defines “one off-transaction” which also comprises two or more linked transactions being the total amount of those transactions equal to or more than EUR 15,000. The legislation also provides that, where at any later stage it comes to the attention of the relevant persons that 2 or more transactions were linked, identification measures must be applied as soon as reasonably practicable.</p>
<i>Conclusion</i>	CDD requirements are applied when carrying out occasional transactions of EUR 15,000 or more.
<i>Recommendations and Comments</i>	The requirement is implemented.

4.	Beneficial Owner
<i>Art. 3(6) of the Directive (see Annex)</i>	The definition of ‘Beneficial Owner’ establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
<i>FATF R. 5 (Glossary)</i>	‘Beneficial Owner’ refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.

<i>Key elements</i>	Which approach does your country follow in its definition of “beneficial owner”? Please specify whether the criteria in the EU definition of “beneficial owner” are covered in your legislation.
<i>Description and Analysis</i>	<p>Article 2 of the Money Laundering Order defines beneficial owner as follows:</p> <p><i>(1) For the purposes of this Order, each of the following individuals is a beneficial owner or controller of a person (“other person”) where that other person is not an individual –</i></p> <p><i>(a) an individual who is an ultimate beneficial owner of that other person (whether or not the individual is its only ultimate beneficial owner); and</i></p> <p><i>(b) an individual who ultimately controls or otherwise exercises control over the management of that other person (whether the individual does so alone or with any other person or persons).</i></p> <p><i>(2) For the purposes of paragraph (1) it is immaterial whether an individual’s ultimate ownership or control is direct or indirect.</i></p> <p><i>(3) No individual is to be treated by reason of this Article as a beneficial owner of a person that is a body corporate the securities of which are listed on a regulated market.</i></p> <p><i>(4) In determining whether an individual is a beneficial owner or controller of another person, regard must be had to all the circumstances of the case, in particular the size of an individual’s beneficial ownership or degree of control having regard to the risk of that individual or that other person being involved in money laundering.</i></p> <p>The AML/CFT Handbooks explain how to determine whether an individual is a beneficial owner or controller. An individual will be a beneficial owner or controller where he or she: (i) has a material controlling ownership interest or controls through other ownership means; (ii) exercises control through other means; or (iii) exercises control through positions held. Furthermore, the AML/CFT Handbooks state that, when the risk is lower, a general threshold of 25% is considered to indicate a material controlling ownership interest in capital.</p> <p>In cases of legal arrangements, Article 3(7) of the Money Laundering Order explains that the following persons must be identified: (i) settlor and protector (in relation to a trust); (ii) having regard to risk, each person who has a beneficial interest in the legal arrangement; (iii) having regard to risk, each person who is the object of a trust power; and (iv) any individual who otherwise exercises ultimate effective control over the legal arrangement. Where any person covered by (i), (ii) or (iii) is not an individual, then there is a requirement to identify the individuals who are that person’s beneficial owner or controller in line with Article 2 of the Money Laundering Order.</p> <p>According to section 4.4 of the AML/CFT Handbooks, when the person has a beneficial interest in the legal arrangement or the person is the object of a trust power, while determining whether a person has a beneficial interest or is the object of a trust power regard may be had to the risk of money laundering:</p> <p>a) In case of a trust, persons with beneficial interest are the beneficiaries</p>

	<p>who have a vested right to the trust property or income, and other beneficiaries and persons who are the object of a power and which have been identified as presenting higher risk.</p> <p>b) In case of a limited partnership, persons with beneficial interest are those: (i) with a material controlling ownership interest or who control through other ownership means; (ii) exercising control through other means; or (iii) exercising control through positions held. For lower risk relationship, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a limited partnership.</p>
<i>Conclusion</i>	The definition of beneficial owner is in line with the EU Directive.
<i>Recommendations and Comments</i>	The requirement is implemented.

5.	Financial activity on occasional or very limited basis
<i>Art. 2(2) of the Directive</i>	<p>Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive.</p> <p>Art. 4 of Commission Directive 2006/70/EC further defines this provision.</p>
<i>FATF concerning financial institutions</i> R.	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
<i>Key elements</i>	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
<i>Description and Analysis</i>	Jersey legislation does permit legal and natural persons who engage in a financial activity (which falls within the scope of Article 3(1) or (2) of the Directive) on an occasional or very limited basis to be excluded from the scope of the Money Laundering Order. This is the case of paragraph 13 of the Schedule to the Trust Company Business Exemption Order which enables a person who acts as a director of not more than six companies to do so without having to register under the Financial Services Law.
<i>Conclusion</i>	The exemption set out from the AML/CFT scope covers situations which are considered to be low risk, even if the activity is carried on largely, and not on an occasional basis as determined by the EU Directive.
<i>Recommendations</i>	Jersey authorities are encouraged to consider all criteria set out in Article 4 of

<i>and Comments</i>	Commission Directive 2006/70/EC in this context.
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6.	Simplified Customer Due Diligence (CDD)
<i>Art. 11 of the Directive</i>	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
<i>FATF R. 5</i>	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
<i>Key elements</i>	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
<i>Description and Analysis</i>	<p>Broadly equivalent provisions to those in the Directive 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>Articles 17 and 18 of the Money Laundering Order provide for simplified identification measures to be applied. Article 17 of the Money Laundering Order refers to some limited cases where the customer is a relevant person or equivalent business, while Article 18 also applies to those transactions when the ML/FT risk is considered to be low.</p> <p>Article 18 of the Money Laundering Order provides for simplified identification measures to be applied in three cases not envisaged by the Directive (or Directive 2006/70/EC).</p>
<i>Conclusion</i>	Application of simplified identification measures goes beyond the provisions of the EU directive in certain cases, that the authorities consider present lower ML/TF risk.
<i>Recommendations and Comments</i>	Jersey should review the existing provisions and consider to apply simplified CDD only in the cases set out in the 3 rd EU Directive.

7.	Politically Exposed Persons (PEPs)
<i>Art. 3(8), 13(4) of the Directive (see Annex)</i>	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with

	prominent public functions (Art. 2(4)).
<i>FATF R. 6 and Glossary</i>	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
<i>Key elements</i>	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
<i>Description and Analysis</i>	<p><u>Article 2 of Commission Directive 2006/70/EC</u></p> <p>The term PEP is defined in Article 15(6) of the Money Laundering Order to cover:</p> <ul style="list-style-type: none"> • 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"> ○ Heads of state, heads of government, senior politicians, ○ Senior government, judicial or military officials, ○ Senior executives of state owned corporations, ○ Important political party officials; • An immediate family member of the person mentioned above, including any of the following: <ul style="list-style-type: none"> ○ A spouse, ○ A partner, that is someone considered by his or her national law as equivalent or broadly equivalent to a spouse, ○ Children and their spouses or partners, ○ Parents, ○ Grandparents and grandchildren, ○ Siblings; • Close associates of the 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. <p><u>Article 13(4) of the Directive</u></p> <p>Article 11(1) of the Money Laundering Order requires a relevant person to maintain appropriate and consistent policies and procedures relating to CDD measures. These must have regard to the degree of risk of ML or FT.</p> <p>Article 11(3)(c) provides that these policies and procedures must include policies and procedures for determining whether the following is a PEP: (i) a customer; (ii) a beneficial owner or controller of a customer; (iii) a third party for whom a customer is acting; (iv) a beneficial owner or controller of a third party described in (iii) or; (v) a person acting, or purporting to act, on behalf of a customer.</p>

	<p>Article 15(5) of the Money Laundering Order applies where:</p> <ul style="list-style-type: none"> • A relevant person has, or proposes to have, a business relationship with a PEP or proposes to carry out a one-off transaction with such a person; or • Any of the following is a PEP: (i) a beneficial owner or controller of the customer; (ii) a third party for whom the customer is acting; (iii) a beneficial owner or controller of a third party described in (ii); or (iv) a person acting, or purporting to act, on behalf of the customer. <p>Where Article 15(5) applies, enhanced CDD measures must be applied on a risk sensitive basis, include requiring any new business relationship (or continuation thereof) or any new one-off transaction to be approved by the senior management of the relevant person, and measures to establish the source of the wealth of the PEP and source of funds involved in the business relationship or one-off transaction.</p> <p><u>Article 2(4) of the Implementation Directive.</u></p> <p>Not implemented in Jersey.</p>
<i>Conclusion</i>	Provisions in force are in line with the EU Directive. It must be noted, that according to Jersey legislation, a politically exposed person continues to be considered as such for AML/CFT purposes even after one year of the PEP ceasing to be entrusted with prominent functions.
<i>Recommendations and Comments</i>	The requirement is implemented.

8.	Correspondent banking
<i>Art. 13(3) of the Directive</i>	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
<i>FATF R. 7</i>	Recommendation 7 includes all jurisdictions.
<i>Key elements</i>	Does your country apply Art. 13(3) of the Directive?
<i>Description and Analysis</i>	<p>Article 13(3) of the Directive is not implemented in Jersey.</p> <p>Article 15(4) of the Money Laundering Order requires enhanced CDD to be applied where a relevant person that is a bank has, or proposes to have, a banking or similar relationship with an institution whose address for that purpose is outside Jersey.</p>
<i>Conclusion</i>	Jersey does not apply the limitation of Article 13(3) of the Directive.
<i>Recommendations and Comments</i>	None

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9.	Enhanced Customer Due Diligence (ECDD) and anonymity
<i>Art. 13(6) of the Directive</i>	The Directive requires ECDD in case of ML or TF threats that may arise from <u>products</u> or <u>transactions</u> that might favour anonymity.
<i>FATF R. 8</i>	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing <u>technologies</u> that might favour anonymity [...].
<i>Key elements</i>	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
<i>Description and Analysis</i>	<p>Article 11(1) of the Money Laundering Order requires a relevant person to maintain appropriate and consistent policies and procedures relating to CDD measures. These must have regard to the degree of risk of ML or FT.</p> <p>Article 11(3)(b) provides that these policies and procedures must include policies and procedures <u>for taking additional measures</u> where appropriate, to prevent the use for ML and FT of <u>products and transactions which are susceptible to anonymity</u>.</p> <p>Article 11(3)(ba) provides that these policies and procedures must include policies and procedures for the identification of risks that may arise in relation to the development of new products, services or practices, including new delivery mechanisms.</p> <p>Article 11(3)(bb) provides that these policies and procedures must include policies and procedures for the identification of risks that may arise in relation to the use of new or developing technologies for new or existing products or services.</p>
<i>Conclusion</i>	The provisions set out in Jersey legislation implement the requirement of Article 13(6) of the EU Directive.
<i>Recommendations and Comments</i>	The requirement is implemented.

10.	Third Party Reliance
<i>Art. 15 of the Directive</i>	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
<i>FATF R. 9</i>	Allows reliance for CDD performance by third parties but does not specify

	particular obliged entities and professions which can qualify as third parties.
<i>Key elements</i>	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
<i>Description and Analysis</i>	<p>As described earlier, Article 16 of the Money Laundering Order permits financial institutions and DNFBPs to place reliance on certain identification measures that have already been applied by an obliged person (including documentation collected and retained), when establishing a business relationship or carrying out a one-off transaction with a mutual customer. Reliance on an obliged person is subject to specified conditions.</p> <p>Article 16(1) of the Money Laundering Order defines an obliged person as a person in respect of whose financial services business the Commission discharges supervisory functions or is a person carrying on “equivalent business” (defined in Article 5 of the Money Laundering Order).</p> <p>Besides the definitions above there are no specific categories who can qualify as third parties.</p> <p>A relevant person may place reliance on an obliged person only where a number of conditions are met. See description under R. 9 for more details.</p>
<i>Conclusion</i>	Provisions dealing with reliance on obliged parties are in line with the Directive.
<i>Recommendations and Comments</i>	The requirement is implemented.

11.	Auditors, accountants and tax advisors
<i>Art. 2(1)(3)(a) of the Directive</i>	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
<i>FATF R. 12</i>	<p>CDD and record keeping obligations</p> <ol style="list-style-type: none"> do not apply to auditors and tax advisors; apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: <ul style="list-style-type: none"> buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT

	Methodology criterion 12.1(d)).
<i>Key elements</i>	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
<i>Description and Analysis</i>	<p>Paragraph 4 of Part B of Schedule 2 of the Proceeds of Crime Law describes services provided by accountants. The business of providing any of the following (“accountancy services”) is covered:</p> <ul style="list-style-type: none"> • External accountancy services; • Advice about the tax affairs of another person; • Audit services; or • Insolvency services. <p>Section 1.5.1 of the Handbook for the Accountancy Sector explains that, for the purpose of this Handbook, “accountancy services” includes any service provided under a contract for services (i.e. not a contract of employment) which pertains to the recording, review, analysis, calculation or reporting of financial information.</p> <p>Paragraph 4 of Part B of Schedule 2 states that “audit services” are audit services provided by way of business pursuant to any function under any enactment.</p> <p>Paragraph 4 of Part B of Schedule 2 states that “insolvency services” are services provided by a person if, by way of business, that person accepts appointment as:</p> <ul style="list-style-type: none"> • A liquidator under Chapter 4 of Part 21 of the Companies Law; • An insolvency manager appointed under Part 5 of the Limited Liability Partnerships Law as that Law has effect in its application to insolvent limited liability partnerships pursuant to the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998; or • As agent of an official functionary appointed in the case of a <i>remise de biens, cession, or désastre</i>. <p>A person carrying on accountancy services must apply CDD measures in line with Article 13 of the Money Laundering Order, i.e.:</p> <ul style="list-style-type: none"> • Identification measures must be applied before the establishment of a business relationship or before carrying out a one-off transaction; • On-going monitoring must be applied during a business relationship; • Identification measures must be applied where ML or FT is suspected or there are doubts about the veracity or adequacy of documents, data or information previously obtained under CDD measures. <p>A person carrying on accountancy services must report knowledge or suspicion (including having reasonable grounds for suspicion) under: (i) Article 34D of the Proceeds of Crime Law – ML and FT; and (ii) Article 21 of the Terrorism</p>

	Law - FT, both as amended by the Proceeds of Crime and Terrorism Law.
<i>Conclusion</i>	Auditors, external accountants and tax advisers are subject to due diligence and record-keeping obligations when carrying out their professional activities, and reporting obligations.
<i>Recommendations and Comments</i>	The provisions are in line with the Directive.

12.	High Value Dealers
<i>Art. 2(1)(3)e) of the Directive</i>	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
<i>FATF R. 12</i>	The application is limited to those dealing in precious metals and precious stones.
<i>Key elements</i>	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
<i>Description and Analysis</i>	<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 EUR 15,000 (or equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked. Cash means notes, coins, travellers' cheques, cheques and bearer negotiable instruments.</p>
<i>Conclusion</i>	Jersey has adopted a broader approach.
<i>Recommendations and Comments</i>	The provisions set out under Jersey legislation implement the requirements of the EU Directive.

13.	Casinos
<i>Art. 10 of the Directive</i>	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
<i>FATF R. 16</i>	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
<i>Key elements</i>	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of

	financial transactions by casino customers?
<i>Description and Analysis</i>	<p>Article 13 of the Money Laundering Order requires identification measures to be applied before the establishment of a business relationship or before carrying out a one-off transaction.</p> <p>For the purposes of the Order, Article 4 states that a “one-off transaction” means:</p> <ul style="list-style-type: none"> • A transaction of not less than EUR 3,000 carried out in the course of operating a casino; or • Two or more transactions carried out in the course of operating a casino: (i) where it appears at the outset to any person handling any of the transactions that those transactions are linked and that the total amount of those transactions is not less than EUR 3,000; or (ii) where at any later stage it comes to the attention of any person handling those transactions that (i) is satisfied.
<i>Conclusion</i>	The provisions set out under Article 10 of the Directive are not implemented in Jersey.
<i>Recommendations and Comments</i>	In order to implement the EU Directive requirements, Jersey authorities should amend Article 13 of the Money Laundering Order to ensure that all casino customers are identified and their identity is verified if they purchase or exchange gambling chips with a value of EUR 2,000 or more, unless they are identified at entry.

14.	Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU
<i>Art. 23(1) of the Directive</i>	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
<i>FATF Recommendations</i>	The FATF Recommendations do not provide for such an option.
<i>Key elements</i>	Does the country make use of the option as provided for by Art. 23(1) of the Directive?
<i>Description and Analysis</i>	Jersey has not opted for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body. Accountants, auditors and tax advisors, notaries and other independent legal professionals are required to report to the FIU.
<i>Conclusion</i>	Jersey legislation does not make use of the option set out in Article 23(1) of the Directive.

<i>Recommendations and Comments</i>	None.
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15.	Reporting obligations
<i>Arts. 22 and 24 of the Directive</i>	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obligated persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
<i>FATF R. 13</i>	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
<i>Key elements</i>	What triggers a reporting obligation? Does the legal framework address <i>ex ante</i> reporting (Art. 24 of the Directive)?
<i>Description and Analysis</i>	<p>Requirements to report suspicion of ML and FT are provided for in Articles 34A and 34D of the Proceeds of Crime Law, and Articles 19 and 21 of the Terrorism Law, both as amended by the Proceeds of Crime and Terrorism Law.</p> <p>Each contains a direct reporting obligation in respect of any person in a trade, profession, or employment, and additional obligations apply to a financial institution or DNFBP (a relevant person).</p> <p>Following enactment of the Proceeds of Crime and Terrorism Law, Article 34D of the Proceeds of Crime Law applies where two conditions are fulfilled:</p> <ul style="list-style-type: none"> • The first condition is that a person (“A”) knows, suspects or has reasonable grounds for suspecting that another person is engaged in ML or FT or that any property constitutes or represents proceeds of criminal conduct. • The second condition is that the information or other matter on which A’s knowledge or suspicion is based, or which gives reasonable grounds for such suspicion, came to A in the course of the carrying on of a financial services business. <p>Where Article 34D applies, a person must disclose the knowledge, suspicion or grounds for suspicion and the information or other matter to the FIU or nominated officer (MLRO or designated officer), in good faith and as soon as practicable after the information or other matter comes to A . If A does not make such a disclosure, A commits an offence.</p> <p>Following enactment of the Proceeds of Crime and Terrorism Law, Article 21 of the Terrorism Law applies where two conditions are fulfilled:</p> <ul style="list-style-type: none"> • The first condition is that the person knows, suspects or has reasonable grounds for suspecting that another person has committed an FT offence. • The second condition is that the information or other matter on which the

	<p>person's knowledge or suspicion is based, or which gives reasonable grounds for such suspicion, came to the person in the course of business of a financial institution (defined to include DNFBP activities too).</p> <p>Where Article 21 applies, the person must disclose the knowledge, suspicion or grounds for suspicion and the information or other matter to the FIU or nominated officer (MLRO or designated officer), in good faith and as soon as practicable after the information or other matter comes his/her attention. An offence is committed where a disclosure is not made.</p> <p>Other provisions in the Proceeds of Crime Law and Terrorism Law explicitly address ex-ante reporting. Where a person does any act, or deals with property in any way which, apart from a provision in Article 32(3) of the Proceeds of Crime Law as amended by the Proceeds of Crime and Terrorism Law, would amount to the commission of a ML offence, the person shall not be guilty of such an offence:</p> <ul style="list-style-type: none"> • If the disclosure is made before the person does the act in question (ex-ante) and the act is done with the consent of a police officer; or • If the disclosure is made after the person does the act in question (ex-post), it is made on the person's own initiative and as soon as reasonably practicable after the person has done the act in question. <p>Similar provisions are to be found in Article 18 of the Terrorism Law.</p>
<i>Conclusion</i>	The legal framework addresses ex-ante reporting.
<i>Recommendations and Comments</i>	None.

16.	Tipping off (1)
<i>Art. 27 of the Directive</i>	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
<i>FATF R. 14</i>	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
<i>Key elements</i>	Is Art. 27 of the Directive implemented in your jurisdiction?
<i>Description and Analysis</i>	<p>The Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014 include provisions to prevent disclosure of the identity of the individual who has made the SAR to the MLRO or designated officer where the disclosure is to:</p> <ul style="list-style-type: none"> • Another part of the financial group of which the relevant person is a part (Regulation 4); and • Another relevant person (Regulation 5).

	The FIU as a practice does not disclose personal details of staff of reporting institutions, other than where the content of SARs is shared with the Commission to assist with its statutory functions. Reporting institutions are also obliged to implement internal safeguards for the protection of reporting persons.
<i>Conclusion</i>	Jersey has adopted several measures to protect the employees of reporting institutions.
<i>Recommendations and Comments</i>	None.

17.	Tipping off (2)
<i>Art. 28 of the Directive</i>	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
<i>FATF R. 14</i>	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
<i>Key elements</i>	Under what circumstances are the tipping off obligations applied? Are there exceptions?
<i>Description and Analysis</i>	<p>Tipping off provisions in Article 35 of the Proceeds of Crime Law and Article 35 of the Terrorism Law also cover on-going or proposed ML or FT investigations.</p> <p>Article 35(2) of both laws applies where a person knows or suspects that the Attorney General or any police officer is acting or proposing to act in connection with an investigation that is being, or is about to be conducted, into ML or TF. It is an offence for a person to disclose to another person any information relating to the investigation or to interfere with material which is likely to be relevant to the investigation.</p> <p>Article 35(4) of both laws applies where a person knows or suspects that a SAR has been or will be made. It is an offence to disclose to another person the fact that such a SAR has been or will be made, or any information otherwise relating to such a SAR, or to interfere with material which is likely to be relevant to an investigation resulting from such a SAR.</p> <p>However, under Article 35(6), a tipping off offence is not committed when a relevant person discloses: that an internal SAR has been made; that it will make, or has made, an external SAR; information relating to such SARs; or information relating to a criminal investigation to its:</p> <ul style="list-style-type: none"> • Lawyer - in order to obtain legal advice or for the purpose of legal proceedings (except where the disclosure is made with a view to furthering a criminal purpose); or • Accountant – for the purpose of enabling the accountant to provide certain services, e.g. in order to provide information that will be relevant to the

	<p>statutory audit of a relevant person's financial statements (except where the disclosure is made with a view to furthering a criminal purpose).</p> <p>Also, a tipping off offence will not be committed where a disclosure is permitted under the Tipping Off Regulations – a protected disclosure. So long as a disclosure meets conditions that are set in the Tipping Off Regulations, a disclosure will be a protected disclosure where it is:</p> <ul style="list-style-type: none"> • Made as a result of a legal requirement; • Made with the permission of the JFCU; • Made by an employee of a person to another employee of the same person; • A disclosure within a financial group or network; • Made to another relevant person (but not an equivalent business); or • Made to the Commission. <p>Finally, 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 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.</p>
<i>Conclusion</i>	The tipping off measures in place extend to cases where a money laundering or terrorist financing investigation is being or may be carried out.
<i>Recommendations and Comments</i>	None.

18.	Branches and subsidiaries (1)
<i>Art. 34(2) of the Directive</i>	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
<i>FATF R. 15 and 22</i>	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
<i>Key elements</i>	Is there an obligation as provided for by Art. 34(2) of the Directive?
<i>Description and Analysis</i>	<p>Article 11(1) of the Money Laundering Order states that a relevant person must maintain appropriate and consistent policies and procedures in respect of that person's financial services business carried on in Jersey or elsewhere, or a financial services business carried on in Jersey or elsewhere by a subsidiary of that person.</p> <p>Article 11(8) of the Money Laundering Order requires a relevant person with</p>

	any subsidiary or branch that carries on a financial services business to communicate to that subsidiary or branch its policies and procedures for complying with Article 11(1).
<i>Conclusion</i>	The Money Laundering Order provisions set out obligations which are in line with requirements under Article 34(2) of the 3 rd EU Directive.
<i>Recommendations and Comments</i>	The provisions set out under Jersey legislation implement the requirements of the EU Directive.

19.	Branches and subsidiaries (2)
<i>Art. 31(3) of the Directive</i>	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
<i>FATF R. 22 and 21</i>	Requires financial institutions to inform their competent authorities in such circumstances.
<i>Key elements</i>	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
<i>Description and Analysis</i>	<p>Article 10A(7) of the Money Laundering Order states that, where the legislation of a third country does not permit the application of the Money Laundering Order to a branch or measures that are at least equivalent to a subsidiary, the relevant person must inform its supervisor (the Commission).</p> <p>To the extent that the legislation of a third country does not have the effect of preventing or prohibiting a relevant person from taking other reasonable steps to deal effectively with the risk of ML or FT, Article 10A(8) requires the relevant person to take those reasonable steps.</p>
<i>Conclusion</i>	Article 10A(7) and 10A(8) of the Money Laundering Order are in line with the requirements of the FATF Standards and EU Directive respectively.
<i>Recommendations and Comments</i>	None.

20.	Supervisory Bodies
<i>Art. 25(1) of the Directive</i>	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.

<i>FATF R.</i>	No corresponding obligation.
<i>Key elements</i>	Is Art. 25(1) of the Directive implemented in your jurisdiction?
<i>Description and Analysis</i>	<p>Article 23(1) of the Money Laundering Order states that, if the Commission obtains any information and is of the opinion that the information indicates that any person has or may have been engaged in ML or FT, the Commission shall disclose that information to the JFCU as soon as is reasonably practicable.</p> <p>Article 23(5A) of the Money Laundering Order places an identical requirement on any supervisory body that is designated under the Supervisory Bodies Law.</p>
<i>Conclusion</i>	Jersey has implemented the obligation set out in Article 25(1) of the EU directive.
<i>Recommendations and Comments</i>	The provisions in place are in line with the EU directive requirements.

21.	Systems to respond to competent authorities
<i>Art. 32 of the Directive</i>	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquiries from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
<i>FATF R.</i>	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
<i>Key elements</i>	Are credit and financial institutions required to have such systems in place and effectively applied?
<i>Description and Analysis</i>	<p>Jersey legislation does not explicitly cover this matter.</p> <p>Nonetheless, the parties under obligation are required to keep relevant documents for at least 5 years and to submit all information required to the competent authorities in a timely manner.</p>
<i>Conclusion</i>	The provisions of the Money Laundering Order and the AML/CFT Handbooks enable Jersey to meet the requirement of Article 32 of the Directive
<i>Recommendations and Comments</i>	None.

22.	Extension to other professions and undertakings
<i>Art. 4 of the Directive</i>	The Directive imposes a <i>mandatory</i> obligation on Member States to extend its provisions to other professionals and categories of undertakings other than

	those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
<i>FATF R. 20</i>	Requires countries only to consider such extensions.
<i>Key elements</i>	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
<i>Description and Analysis</i>	<p>Jersey has decided to extend the application of AML/CFT obligations to other professions and categories of undertakings than those referred to in Article 2(1) of the Directive, namely professions carrying out the following activities:</p> <ul style="list-style-type: none"> - Those providing advice to undertakings on capital structure and industrial strategy as well as services relating to mergers and the purchase of undertakings. - Cheque cashers; - Bureaux de change and money transmitters that only carry out transactions of between €1000 and €15,000. <p>Decisions to apply these obligations did take risk into account, though no formal risk assessment was produced at the time.</p> <p>At the time of the on-site Jersey was also considering extending AML/CFT obligations to virtual currency operators who exchange virtual currency with fiat currency (and vice versa).</p>
<i>Conclusion</i>	In line with Article 4 of the Directive, the AML/CFT obligations have been extended to other professionals and categories of undertaking. However, no formal risk assessment has been undertaken in this regard.
<i>Recommendations and Comments</i>	Jersey should undertake a formal risk assessment in order to analyse whether all relevant professionals and categories of undertaking which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes are subject to AML/CFT obligations.

23.	Specific provisions concerning equivalent third countries?
<i>Art. 11, 16(1)(b), 28(4),(5) of the Directive</i>	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
<i>FATF R.</i>	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
<i>Key elements</i>	How, if at all, does your country address the issue of equivalent third countries?
<i>Description and Analysis</i>	Jersey's legal framework addresses the issue of equivalence in the Money Laundering Order, as complemented by the AML/CFT Handbooks.

	<p>Article 5 of the Money Laundering Order defines the term of “equivalent business”, which comprises also equivalent countries and territories. A business is equivalent business in relation to any category of financial services business carried on in Jersey if:</p> <ul style="list-style-type: none"> • The other business is carried on in a country or territory other than Jersey; • If carried on in Jersey, it would be financial services business of that category; • In that other country or territory, the business may only be carried on by a person registered or otherwise authorised for that purpose under the law of that country or territory; • The conduct of the business is subject to requirements to forestall and prevent ML and FT that are consistent with those in the FATF Recommendations in respect of that business; and • The conduct of business is supervised for compliance by an overseas regulatory authority. <p>Section 1.7 of the AML/CFT Handbooks sets out the basis for determining whether a jurisdiction’s requirements are consistent.</p> <p>Appendix B of the AML/CFT Handbooks provides for a non-exhaustive list of countries and territories that are considered to be “equivalent jurisdictions” and that the Commission considers to have set requirements that are consistent with those in the FATF Recommendations - for the purposes of applying simplified identification measures under Articles 17 and 18 and for placing reliance on third parties under Article 16.</p> <p>The list in place at the time of the evaluation visit included:</p> <ul style="list-style-type: none"> • FATF Members: Australia, Japan, Austria, Luxembourg, Belgium Netherlands (excluding Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten), Canada, New Zealand, Denmark, Norway, Finland, Portugal, France, Singapore, Germany, South Africa, Greece, Spain, Hong Kong, Sweden, Iceland, Switzerland, Ireland, United Kingdom, Italy, United States: • EU/EEA Members (which are not also FATF members): Bulgaria, Lithuania, Cyprus, Malta, Czech Republic, Poland, Estonia, Romania, Hungary, Slovakia, Latvia, Slovenia, Liechtenstein, Gibraltar (through the UK) • Crown Dependencies and overseas territories: Guernsey, Isle of Man, Cayman Islands. <p>A relevant person may assess whether an overseas jurisdiction that is not listed by the Commission in Appendix B of the AML/CFT Handbooks is “equivalent”, by following the approach set out in section 1.7 in such cases, the relevant person must be able to demonstrate the process that it has undertaken and the basis for its conclusion.</p> <p>Article 15 of the Money Laundering Order requires to apply enhanced CDD in all situations which present a higher risk of ML/TF, and applies to any customer relationship, including those with credit and FIs in</p>
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	equivalent jurisdictions.
<i>Conclusion</i>	Jersey addressed the issue of equivalent third countries in a similar manner to the approach taken by the EU.
<i>Recommendations and Comments</i>	None.