



Jersey Financial  
Services Commission

# **Business Plan 2011 - 2013**

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## **SECTION 1: INTRODUCTION**

The 2011 - 2013 Business Plan sets out the Commission's objectives together with an explanation of how they will be met. Included in the Business Plan are all known objectives at the time of writing. While many of these are likely to be completed during 2011, some will continue into 2012 and beyond. The Business Plan has been formulated to take account of the Commission's Key Purpose and Aims. These are set out below.

### **Key Purpose**

The Commission's key purpose is to maintain the Island's position as an international finance centre with high regulatory standards by:

- reducing risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers;
- protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters;
- safeguarding the best economic interests of Jersey; and
- countering financial crime both in Jersey and elsewhere.

### **Aims**

In support of its key purpose, the Commission aims to:

- ensure that all entities that are authorised meet fit and proper criteria;
- ensure that all regulated entities are operating within accepted standards of good regulatory practice;
- match international standards in respect of banking, securities, trust company business and insurance regulation, and anti-money laundering and terrorist financing defences;
- identify and deter abuses and breaches of regulatory standards; and
- ensure that the Commission and the Registry operate effectively and efficiently.

## SECTION 2: ACHIEVEMENTS IN 2010

### Overview

The Island has continued to receive good ratings in the wide-ranging reviews and evaluations of its financial services industry (the “**Industry**”) from international bodies over the last three years, and the resulting reports have furnished strong endorsements of the Island’s approach in these areas, which distinguish it from other offshore financial centres and assist the Island’s regulated firms in gaining access to international markets.

In particular, the International Monetary Fund (the “**IMF**”), which published its Financial System Stability Assessment Update (“**FSSA**”) on Jersey in September 2009, concluded that financial sector regulation and supervision are of a “high standard” and “comply well” with international standards, and that Jersey has put in place a “comprehensive and robust” framework for countering money laundering and terrorist financing (“**AML/CFT**”) and has achieved a “high level of compliance” with almost all aspects of the Financial Action Task Force’s (“**FATF**”) 40+9 Recommendations. The FSSA, together with the three associated Detailed Assessment Reports, set out a number of recommendations, and the Commission, in conjunction with other Island Authorities, developed four action plans to deal with those recommendations, which were published in March 2010. Those action plans have started to be updated with the measures undertaken to address those recommendations.

As anticipated in the 2010 - 2012 Business Plan, the Commission was able to consolidate and further enhance the effectiveness of the regulatory approach, primarily through the continued effort and focus on the closer supervision of the Industry by carrying out on-site examination programmes across all regulated sectors. The findings of the examinations have been discussed with the businesses concerned and, where necessary, remedial plans have been put in place. General issues arising from such examinations have been published on the Commission’s Website and are further explained in the specific Divisional sections in this Business Plan.

The Commission also aimed to balance market orientated initiatives, as Industry seeks to take advantage of business from new and emerging markets, with the Commission’s key purpose and aims.

Contingency was necessarily built into the Commission’s resource planning to facilitate the ability to react quickly to new developments, particularly in the area of investigations and litigation where there continue to be some challenging cases. The development and use of settlement agreements during 2010, whereby an early

conclusion to an enforcement case can be achieved, has resulted in the substantial saving of investigation time, thereby allowing resources to be diverted to other cases and increasing the overall through-put of cases. In addition, the Commission continued to alleviate pressure on resources through the application of its risk-based approach to supervision.

An Internal Audit function was introduced at the beginning of 2010 and, as a result, the Commission's internal processes and procedures have been subject to greater scrutiny. The agreed findings are addressed so that greater reliance can be placed on those processes and procedures.

The Commission has been cognizant of the prevailing economic climate and has made the progress detailed in the rest of this Section during 2010 with no overall increase in staff resources.

### **Corporate Governance**

Clive Jones was re-appointed as a Commissioner and the Chairman of the Board of Commissioners by the States of Jersey (the "**States**") in October 2010 for a second term of three years. John Harris and Sir Nigel Wicks were also re-appointed to serve second terms during 2010.

Lord Eatwell of Stratton St Margaret joined the Board of Commissioners (the "**Board**") on 22 April 2010 to fill the vacancy created by the retirement of Alastair Clark in the latter part of 2009. On 31 May 2010, Jacqueline Richomme, who was also Deputy Chairman, and Dr Frederik Musch retired after both serving for three terms as Commissioners. On 1 June 2010, Commissioner John Averty was appointed as Deputy Chairman and Crown Advocate Cyril Whelan was appointed as a Commissioner to fill one of the vacancies. On 13 September 2010, Mr Markus Ruetimann joined the Board to fill the second vacancy.

The Commission has continued to monitor its standards of corporate governance to ensure that it meets, so far as is applicable, the standards that are applied to commercial organisations. The model used for monitoring and mitigating risks is the "Combined Code on Corporate Governance" issued by the Financial Reporting Council in the United Kingdom (the "**UK**").

## **Summary Progress against key priorities set out in the published Business Plan and Annual Report**

A summary of the key areas of progress against the main priorities of the 2010 Business Plan is set out below.

The Commission has continued its focus on close supervision through on-site examinations and following up any necessary action arising out of those examinations. The examination results have also been fed back to Industry in various ways - through seminars, presentations, dialogue with Industry associations, "Dear CEO" letters, the Quarterly eNewsletter, and the Commission's Website. The Commission completed 248 on-site examinations during 2010 against a budget of 251. There were 249 examinations during 2009.

### **International & Policy ("I&P")**

I&P has continued to promote, and assist other Divisions with, the development of the regulatory and supervisory framework in which the Commission functions. It has also continued to consider the scope of the Commission's current regulatory activities in light of developments in the UK and elsewhere in the European Union (the "EU").

In May 2010, I&P issued a consultation paper on options for regulating and supervising providers of payment services, with the aim of meeting criteria that have been set for non-European Economic Area ("EEA") jurisdictions - such as Jersey - to join the Single Euro Payments Area (the "SEPA"). As a result, I&P has requested law drafting time in 2011 to implement in Jersey legislation that is based on Titles III and IV of the Payment Services Directive - the scope of which would be limited to the regulation of SEPA payment instruments.

In November 2009, the Commission published a consultation paper on options for the future regulation of electronic money ("**e-money**"). The consultation process revealed a strong preference to introduce a regulatory regime for e-money issuers - based on the recently updated EU model. Law drafting time has been requested.

I&P supported the Enforcement Division in the task of amending existing legislation to provide for the Commission to be able to recover some or all of its costs and disbursements due to enforcement action and investigations leading to such action. Whilst the necessary legislation was drafted, further work was put on hold pending separate discussions on whether the Commission should have a power to impose civil penalties, where a regulated business has failed to comply with a principle or rule that is set in the Codes of Practice (the "**Codes**") that are issued by the Commission.

Work resumed in the year on proposals to introduce a consistent approach under all the Regulatory Laws<sup>1</sup> for the Commission's involvement in the appointment of an auditor by a regulated business. I&P expects to consult on draft legislation in 2011.

In addition, I&P has coordinated the preparation and delivery of law drafting instructions to generally "maintain" the Regulatory Laws and also the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, and expects to consult on draft legislation in 2011. General liaison with the Law Draftsman's Office has continued, including co-ordination of the delivery of specific law drafting bids.

Late in 2010, at I&P's request, the Board approved a revised policy statement on the Commission's use of public statements. Work has also started on revising the Commission's sensitive activities policy for applications that are made under the Control of Borrowing (Jersey) Order 1958 ("COBO").

A significant amount of Division time has been spent co-ordinating changes that are proposed to the Codes. The changes that are proposed may be grouped into one of two categories: those that are proposed to bring the wording of the seven sets of Codes closer together; and those that are specific to a particular set of Codes. It is also proposed to amend the introduction to the Codes to clarify the legal basis upon which they are set, and how they apply to overseas branches of Jersey incorporated companies, and companies incorporated overseas that carry on business in Jersey.

Linked to this work, consideration has been given to how the Commission's Code-making power may be amended to better reflect the "binding" nature of principles and rules set in Codes. Work will continue in this respect in 2011.

Assistance has been provided to the Enforcement Division on redrafting the Guidance Note on the Decision-making Process. In particular, the Guidance Note has been updated to set out the process that is to be followed where it is possible to agree with the subject of a decision: (i) that there has been wrongdoing; and (ii) on the sanction that is to be applied, including the circumstances when delegated powers may be used to conclude the agreement and when it must be referred to the Board. The revised Guidance Note will be published in 2011.

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<sup>1</sup> The Regulatory Laws are:

- the Banking Business (Jersey) Law 1991;
- the Collective Investment Funds (Jersey) Law 1988;
- the Financial Services (Jersey) Law 1998; and
- the Insurance Business (Jersey) Law 1996.

I&P also co-ordinated changes to a package of documentation for principal and key persons. (This included a new Guidance Note, a revision to the Questionnaire that the Commission requires all principal and key persons to submit before appointment, and new forms to be used where an existing principal or key person wishes to take on additional appointments or ceases to hold such an appointment.) The package was published in May 2010.

I&P has continued to develop and contribute to the development of legislation that sets out how companies and other legal persons are to be constituted, administered and audited.

The Companies (Amendment No. 4) (Jersey) (Regulations) 2009 (the “**Companies Regulations**”) came into force on 5 April 2010. The Companies Regulations amend Part 16 of the Companies (Jersey) Law 1991 (the “**Companies Law**”) to introduce a mechanism for registering and overseeing the work of auditors of market traded companies. The Companies Law refers to such auditors as ‘Recognized Auditors’ and, to date, 22 firms have been registered. Between them, the firms audit approximately 110 market traded companies. Discussions continue with the UK’s Professional Oversight Board (the “**POB**”) and Institute of Chartered Accountants in England and Wales (“**ICAEW**”) on the fees to be charged under the regulatory regime in respect of the firms to be monitored by each of these bodies pursuant to the Companies (Professional Oversight Board) (Jersey) Order 2010.

I&P has contributed to discussions that have led to the delivery of law drafting instructions to amend the Limited Liability Partnerships (Jersey) Law 1997. I&P’s interest has been to understand who it is proposed may act as secretary to a limited liability partnership and what accounting records are to be held in, or accessible from, Jersey by the secretary.

I&P has completed a detailed assessment of the Separate Limited Partnerships (Jersey) Law 201- and the Incorporated Limited Partnerships (Jersey) Law 201-. A number of consequential amendments will be required to the Regulatory Laws and it has been agreed that the Commission should instruct the Law Draftsman’s Office in due course.

I&P has continued to be active in countering money laundering and terrorist financing and promoting the understanding of sanctions legislation within the Island.

- Supporting the Anti-Money Laundering Unit (“**AML Unit**”) with its consultation on fees to be paid by persons carrying on business activities that are listed in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 (the “**Proceeds of Crime Law**”). Unfortunately, the Commission has been

unable to agree a fee to be paid by those persons and the Bailiff has now appointed three Jurats to set a fee that is to be paid.

- Following consultation with the Commission's AML/CFT Steering Group, the AML/CFT Handbook has been revised to take account of a group of countries that have been identified by the Financial Action Task Force (the "FATF") as having strategic AML deficiencies, but which are taking positive action to deal with those deficiencies. The result of this is that Appendix D of the Handbook refers now to three separate groups of countries and territories.
- Preparing a bid for law drafting time to update and/or amalgamate the Proceeds of Crime Law, the Drug Trafficking Offences (Jersey) Law 1988 (the "Drug Trafficking Law") and the Terrorism (Jersey) Law 2002 (the "Terrorism Law") to meet developing international standards and resolve practical difficulties experienced by the prosecuting authorities. This work is being undertaken by I&P on behalf of the Chief Minister's Department, with input from the Law Officers' Department and the Joint Financial Crimes Unit.

Work was undertaken to produce Industry guidance on sanctions during the latter part of 2010, which guidance was published on the Commission's website during January 2011.

I&P has also devoted a substantial amount of time to assisting the Island's authorities with the development of two separate pieces of legislation which will allow the Chief Minister to:

- apply countermeasures to a person who is suspected of money laundering, terrorist financing or assisting with the proliferation of weapons; and
- freeze the property of persons who are suspected of being connected to terrorism.

I&P has also continued to support the Commission in its representation at meetings of international standard setters. In particular, I&P has actively participated in the work of:

- the Implementation Task Force of the International Organisation of Securities Commissions ("IOSCO") and, in particular, the group considering the methodology for assessing compliance with IOSCO Principles 1 to 11 - Regulator and Self-Regulation (including systemic risk and conflicts of interest); and

- the Offshore Group of Banking Supervisors by providing representation at a number of meetings of FATF Expert Group A, which, *inter alia*, is considering revisions to Recommendations 5 (customer due diligence), 9 (reliance on third parties), 33 (transparency of legal persons) and 34 (transparency of legal arrangements).

I&P has also met with the European Commission to discuss auditor oversight provisions in place in the Crown Dependencies (the “CDs”) and arrangements for assessing the equivalence of those provisions under the EU’s Statutory Audit Directive. It seems unlikely that such an assessment will be undertaken before 2012 and, in the meantime, Jersey will continue to be covered by transitional arrangements.

I&P’s responsibilities also extend to co-ordinating and assisting assessments of Jersey’s compliance with international standards in a number of areas.

- Following publication of the final assessment reports of the IMF in 2009, publishing four action plans in February 2010. The action plan to further enhance Jersey’s framework for countering money laundering and terrorist financing was updated in November 2010.
- Participating in a peer review by the Global Forum of implementation in Jersey of international standards for transparency and exchange of information for tax purposes. In particular, the review focused on the information on: beneficial ownership that is held in Jersey (and by whom); and accounting records that are held in, or can be accessed from, Jersey (and by whom). The Global Forum’s report has yet to be published.

I&P is also responsible for co-ordinating and assisting with the agreement of memoranda of understanding with overseas regulators. Work continues on an agreement with the French Autorité de Contrôle Prudentiel, whilst a memorandum with the South African Reserve Bank was signed in April 2010.

I&P has also actively followed a number of developments in the domestic environment in which the Commission functions.

- Submitting comments to the Privileges and Procedures Committee (“PPC”) on a revised draft of the Freedom of Information (Jersey) Law 200- (the “**draft FOI Law**”). The principal concern with the draft law was that, in the Commission’s view, the proposed exemptions were not wide enough and might require the Commission to supply information that it considered to be prejudicial to the exercise of its statutory functions. Following written and oral representations to PPC, the Committee agreed to lodge an amendment to the draft law to widen the type of information

held by the Commission that would be exempt from disclosure (subject to a 'public interest test' against disclosure being met).

- Raising a number of concerns surrounding the proposed introduction of a new system in Jersey to check the credentials of persons employed in the finance sector. Most of these concerns have still to be addressed.
- Finally, negotiations have been concluded on the content of a memorandum of understanding with the Jersey Bank Depositors Compensation Board.

## **Banking**

Changes in key personnel have been made without disruption to effort or performance, although the Division has been fortunate in the strength of available candidates, which eased the challenge considerably. Darren Boschat and Andy Wiseman are welcome additions.

Such changes necessitated the resurrection of internal training sessions. Making time for these is a highly worthwhile discipline and something that the whole team has benefited from. A return to previous levels of external course attendance has also been achieved, with the dual benefit of improving competence and building regulatory contacts.

In the latter respect, an increased number of regulatory colleges are being held in home jurisdictions, which have been attended where appropriate. Collaborative work with the other CDs has also continued on a regular basis, with significant mutual benefit.

All supervisory activities have been completed as planned, including overseas examinations in Guernsey and the Middle-East. Themed on-site examination programmes focused on the risk areas surrounding AML/CFT and conduct (largely advertising and the handling of customer complaints). Summary findings have been published on the Commission's website for Industry guidance, as usual.

The Division has needed to apply significantly heightened supervisory oversight of the banking sector over the last two to three years, given the stressed circumstances seen globally across the financial sector during that period. Banking groups worldwide have contracted and restructured, this on occasion leading to bank departures from the Island.

Most essential project work will have been completed or is well under way, although international developments in areas such as regulatory capital requirements and liquidity management have been quite drawn out. The Division

continues to monitor both these and related implementation plans in the home jurisdictions of our banks.

Early adoption by the UK's Financial Services Authority ("FSA") of revised liquidity standards has created a significant challenge to the offshore banking model, which often involves "upstreaming" funds to group entities, many of which are UK based. The Commission engaged with Industry on this at an early stage and is also in dialogue with relevant home and host jurisdictions.

A good level of progress has been achieved in addressing the recommendations contained in the 2009 IMF report, which formed the bulk of the Division's project work. This has spanned revisions to Large Exposure requirements, financial and other disclosures by banks, a general update of the Codes of Practice for Deposit-taking Business, including the incorporation of the Basel Committee's recommendations in respect of the compliance function, an Accounts Order and the publishing of much broader Industry performance data.

The Commission has also been active in supporting the Government's initiative of introducing a depositor compensation scheme, which will require the ongoing provision of relevant Industry data to the newly formed Jersey Bank Depositors Compensation Board.

## **Insurance**

The Insurance Division continued with its on-site examination programme and has conducted 21 examinations during 2010. The programme included themed examinations in respect of intermediaries that arrange payment protection insurance cover and travel agents that arrange travel insurance. Summarised findings in respect of payment protection insurance have been published on the Commission's website. Those relating to travel insurance will be published during 2011.

A new Guidance Note for licence applications under the Insurance Business (Jersey) Law 1996 was issued following the revision of the Insurance Licensing Policy in 2009.

The Insurance Division hosted and led the Offshore Group of Insurance Supervisors' ("OGIS") annual training seminar for regulators, much of which was based around the insurance core principles issued by the International Association of Insurance Supervisors ("IAIS").

In October, the Commission signed a Multilateral Memorandum of Understanding ("MMoU") with members of the IAIS. Before signing the MMoU, Jersey had to

demonstrate to the IAIS that it had the necessary legislation, powers and practices for the Commission to effectively co-operate on information exchange and to ensure that information exchanged was properly controlled.

## **Funds**

The Funds Supervision Unit undertook 32 on-site examinations during 2010, three of which were themed examinations looking at all aspects concerning the valuation of fund assets. Common themes coming out of 2010's examination programme included: a lack of appropriate due diligence on promoters and other parties in relation to new funds; a failure to demonstrate proper oversight by the board; failure to separate governance and accounting appropriately between legal entities; and a failure to comply with all the requirements of the Island's AML regime.

The Funds Team continued to manage a number of forensic investigations in conjunction with the Enforcement Division, the most notable result being the public statement regarding Standard Bank Jersey Limited and the associated press release in respect of the Belgravia Funds.

Operationally, in Q4 of 2010 the Commission launched the facility to file statistics on-line, which will make the process of statistics reporting for Industry quicker and more straightforward for both Industry and the Commission.

The Division has continued to be actively involved in international and domestic regulatory liaison. On the international front, there has been active participation in IOSCO and in particular the proposed changes to the seminal core principles of securities regulation and related methodology. The Commission is represented on the Implementation Task Force considering the changes and has attended a number of key meetings. The Commission hosted the Enlarged Contact Group of Securities Supervisors' annual conference for the first time. Close liaison has been maintained with Jersey Finance Limited and the Jersey Funds Association on a number of initiatives, including the EU's Directive on Alternative Investment Fund Managers (the "**AIFM Directive**"). Consideration has been given to proposed changes to the recognized fund rules as well as the creation of new categories of recognized funds. The Fund Authorisation User Group also met during the year.

A number of policy developments were progressed during the year. Changes to the Outsourcing Policy have been agreed with Industry in respect of funds and was presented to the Board for approval in Q1 of 2011. Work continues on the revised Certified Funds Prospectuses Order and the introduction of Codes of Practice for Certified Funds (the "**Codes for Funds**"), although completion has been delayed pending the finalization of the AIFM Directive and the changes to the IOSCO principles referred to above.

## Investment Business

The Investment Business Team (the “**IB Team**”) completed a significant number of on-site examinations of investment firms in 2010 and continued work on an investor education initiative which was launched in Q1 of 2011.

The key findings from the IB Team’s themed on-site examination programme in 2010, which focused on conduct of business at IFA firms, were in terms of practice falling on occasions below required standards: inadequate fact finding; issues concerning suitability of advice (products recommended to clients that were not suitable for their circumstances); a failure to fully disclose all relevant commissions, fees and charges to clients; a failure to undertake AML/CFT risk ratings of clients; and issues concerning the systems and controls in place at firms when reliance is placed on introducers and intermediaries in relation to client take-on. The IB Team will provide Industry with a fuller summary of these findings by way of a report summarising the conduct of business examination programme which will be published on the Commission’s website.

The IB Team completed a second mystery shopping exercise<sup>2</sup> in 2010, targeting independent financial advisors (“**IFAs**”) and retail banks. The results and feedback from this work provided the Commission with very valuable information regarding the information and advice provided to prospective investors by these types of firms. A summary report sharing our conclusions resulting from this mystery shopping exercise was published on the Commission’s website in Q1 of 2011.

In terms of policy developments, the IB Team has been closely monitoring the FSA’s Retail Distribution Review (the “**RDR**”). The IB Team has given presentations to local trade and professional bodies outlining the Commission’s intentions to replicate some aspects of the RDR within the local investment business regulatory regime, and it is intended to issue a position paper setting out proposals in more detail in the first half of 2011.

The IB Team has also provided input for States’ projects in 2010, including the proposal to establish a Financial Services Ombudsman and a feasibility study regarding investor compensation arrangements.

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<sup>2</sup> The Market Research Society defines “mystery shopping” or “mystery customer research” as: “The use of individuals trained to experience and measure any customer service process, by acting as potential customers and in some way reporting back on their experience in a detailed and objective way.”

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## **Trust Company Business (“TCB”)**

One of the key achievements during 2010 was the landmark decision by the Royal Court to uphold, on appeal, the Commission’s decision to make public formal restrictions that had been placed on an individual limiting his ability to work within the Industry. This judgment endorsed the Commission’s need to protect those in Jersey and elsewhere to whom a duty was owed and to protect the Island’s reputation as a jurisdiction where high regulatory standards are enforced and thereby to inhibit the commission of a financial crime. Finally the judgment confirmed that the Commission owed a statutory duty to investors, other regulated bodies and to the public to ensure that they were aware of the restrictive directions in place.

Through the Division’s programme of on-site examinations, supervision staff continue to successfully assess trust companies’ compliance with the regulatory and AML requirements, both surfacing and decisively dealing with any underlying serious issues identified within the businesses. This high degree of post on-site examination findings activity, coupled with the fact that the Division was not fully staffed throughout the year, resulted in the overall volume of on-site examinations being scaled back. Whilst 45 examinations had been planned, 39 were completed by the year-end.

New examination themes were developed in 2010 to broaden the coverage across Industry. For example bespoke on-site examinations were designed to test individuals registered to provide directorship services and also firms registered to provide limited services to local businesses. Additionally, coverage was extended to test firms that provide services to private trust companies and employee share option schemes.

Considerable efforts were also expended to provide feedback to Industry during the course of the year. This was achieved in several ways: firstly, by way of speaking at conferences, (including the one day Commission seminar attended by nearly 400 delegates), as well as e-mail updates on key subjects; and, secondly, by the use of “Dear CEO” letters, for example, to raise the issue of the management of conflicts of interest, which had been found to be an issue during a number of examinations. The usual examination finding report in respect of the 2010 programme was published in Q1 of 2011.

As firms increase their risk profile in doing business with or within higher risk jurisdictions, so the Division has had to become increasingly dexterous in assessing those risks, the effectiveness of any mitigators and deciding upon the imposition of additional regulatory controls where necessary.

On the policy front, the Codes of Practice were updated to keep pace with the introduction of the new class of business relating to services provided to foundations. Additionally, the introduction of a de-minimis regime for those individuals providing directorship services was finally implemented.

## **AML Unit**

The AML Unit has continued to consolidate its supervision of persons carrying on business activities that are listed in Schedule 2 of the Proceeds of Crime Law (referred to internationally as Designated Non-Financial Businesses and Professions (“DNFBPs”). Since DNFBPs were first required to register and be supervised in September 2008, in excess of 250 businesses have registered, and the vast majority of these have now been subject to a formal supervision visit. Using data collected from these visits, generic and sector-specific examination findings have been published and circulated to DNFBP representative groups in order to share the good and bad practices observed. The AML Unit continues to “police the perimeter” of the DNFBP sectors and, for example, served a number of notices and directions when it suspected persons were conducting unauthorised activities.

Despite extensive consultation by the AML Unit and others within the Commission with all concerned parties, including the Island’s Government, on the issue of fees to be paid by DNFBPs, agreement has not been reached and the Bailiff has now appointed three Jurats to consider if the proposed fees for DNFBPs are unreasonable having regard to all the circumstances.

The AML Unit has continued with its diverse “outreach activities”. It has maintained regular contact with a number of DNFBP steering and representative bodies. The AML Unit has presented at a number of seminars and conferences, both locally and internationally to raise awareness of AML/CFT matters generally, but also to highlight areas where the experience of the Unit is that input is needed, such as the understanding of sanctions legislation. Such awareness training has not been exclusively external and during the year the AML Unit conducted a number of breakfast briefings and training sessions for Commission staff.

Internationally, the AML Unit has actively participated in the FATF Typologies Group working on new payment methods, which published its report in December 2010. The AML Unit is also represented on the European Commission’s panel of experts on AML/CFT and presented during 2010 in Vienna, Jordan and Libya.

The AML Unit has responsibility for the regulation and supervision of Money Service Business (“MSB”) in the Island. Such business has become increasingly complex, perhaps more so than envisaged when the relevant legislation was introduced in 2007, and has required close scrutiny by the Unit. For example, in

2010 internet-based commercial foreign exchange companies have made numerous preliminary attempts to register in the Island as MSBs.

The AML Unit has responsibility (at the request of the States) for the registration of Non-Profit Organizations (“NPOs”) and to help to determine if an NPO is assisting or being used to assist terrorism. During 2010, the Unit conducted a study on the vulnerabilities of over 600 registered NPOs and in excess of 1,000 “regulated” NPOs (i.e. those administered within regulated entities, such as TCBs, which are not required to register individually with the Commission). The study reported back to the Island’s AML/CFT Strategy Group that perceived risks were not matched by actual risks, which were demonstrably lower than anticipated. The AML Unit will play a prominent role in the Island’s AML/CFT Strategy Group, with particular regard to the assessment and revision of the national risk assessment.

## **Enforcement**

In 2010, the Enforcement Division continued to develop its intelligence function receiving and managing intelligence from the Joint Financial Crimes Unit (“JFCU”) and other sources including information received following the launch of the external whistleblowing line. During the year, the Division held several tripartite meetings with officers from the JFCU and the Law Officers’ Department where cases had both regulatory and criminal implications. Such meetings resulted in the more timely and effective use of resources. Subject to the approval of the Attorney General, the Commission proactively shared intelligence with other relevant supervisory authorities mainly in the area of insider dealing or market manipulation. The proactive sharing of intelligence in this way prompted formal requests for assistance from overseas regulators seeking to convert the intelligence into evidence.

The development and use of settlement agreements in 2010 to secure the early conclusion of enforcement cases was an important milestone and resulted in the substantial saving of investigation time, thereby allowing resources to be diverted to other cases and increasing the through-put of cases. The continued use of public statements to announce enforcement sanctions, and to alert the public and Industry to regulatory misconduct, attracted positive comment from the Industry and demonstrated the Commission’s commitment to taking enforcement action where necessary.

Where appropriate, the Enforcement Division worked on cases in conjunction with other Supervision Divisions drawing upon the expertise of staff within the Commission and ensuring that the Supervision Divisions participated in enforcement cases.

## Registry

The Registry's primary objective is to maintain an efficient and effective service to its users. During 2010, self-imposed targets continued to be met. New online and improved internal workflow systems now require certain tasks, such as publishing registrations on the Commission's website, to be achieved in real time. Indexing registration documents, the process of linking a document to a particular registered entity, has been automated so that documents are searchable once a registration has been published. This process highlights the changing environment in which the Registry operates. As with other registries around the world, Registry users now show a preference to using the online search facility at [www.easycompaniesregistry.je](http://www.easycompaniesregistry.je)

During 2010, a significant amount of work was undertaken in preparing and developing new registers that will be required under new legislation coming into force in early 2011, such as the Incorporated Limited Partnerships (Jersey) Law 201- and the Security Interests (Jersey) Law 201-. The Director, Registry, continued to promote the Companies Registry internationally, particularly through presentations to fora such as the European Commerce Registers' Forum ("ECRF"), the European Business Register ("EBR") and the International Association of Commercial Administrators ("IACA").

## Information and Communication Technology ("ICT")

During 2010, the ICT worked with the Registry to complete the OneSys VI project. This improved the system platform for e-commerce activities and delivered significantly improved workflows providing more efficient business processes and time savings. In the Supervision area, ICT assisted with the completion of the Funds Statistics project that automated the secure delivery of data online. This e-business project generated valuable communication opportunities with entities and this will continue with the projects in the Supervision area in the future.

ICT has continued to develop the SharePoint environment and has developed a number of "pilot" projects that have given valuable insight into the potential of the system for the Commission. Enhancements have been made to the case management system for Enforcement and the professional development review ("PDR") system for Human Resources in the SharePoint environment, both of which were developed in-house.

ICT has continued to develop the ISO27001 information security standard and has automated reviews of the 80 plus processes within SharePoint, thus generating the first Commission "paperless" system where reviews and audit are all automated.

## Human Resources (“HR”)

The HR Division has delivered the Advanced Management Development Masterclass and tendered for and delivered the first Management Development Masterclass. The Commission has successfully become an Approved Development Provider by the Institute of Leadership and Management for both of these in-house programmes. HR has continued with an extensive development programme for all staff in accordance with the Commission’s requirements and individuals’ personal development plans. For the first time the Commission has successfully facilitated a TCB Seminar, an AML Seminar and a Funds Seminar to Industry with 400 participants at each event. The Commission has kept up-to-date with all the new employment legislation in Jersey, including the new redundancy requirements and has continued to participate in the consultations for new legislation. HR has successfully addressed all employee relations’ matters during the year.

Following a tender process involving local law firms, the Commission has identified a provider to review its Staff Handbook in detail. The completion date for this review is anticipated to be the first half of 2011.

HR has continued to promote regulation as a career. The Commission has successfully commenced its Awards for Excellence with some local secondary schools and developed its relationship with those schools in providing career and CV guidance.

### Key Statistics for 2010

#### Total Examinations 2010

Division	Themed	Focused	Discovery	Outreach	Total
TCB	30	1	8	0	39
Funds	3	8	21	0	32
IB	12	3	10	0	25
Banking	14	2	7	0	23
Insurance	14	4	3	0	21
AML Unit	0	0	59	49	108
<b>Total</b>	<b>73</b>	<b>18</b>	<b>108</b>	<b>49</b>	<b>248</b>

## Enforcement Statistics

### Requests received from other regulators actioned during 2010

Requesting organisation	No of Requests	Law used or relevant Law
Australian Securities and Investments Commission	2	Financial Services (Jersey) Law 1998
Austrian Financial Market Authority	1	Financial Services (Jersey) Law 1998
US Securities & Exchange Commission	1	Financial Services (Jersey) Law 1998
	1	Insurance Business (Jersey) Law 1996
Ontario Securities Commission	1	Financial Services (Jersey) Law 1998
UK Financial Services Authority	4	Financial Services (Jersey) Law 1998
French AMF (Autorité Des Marchés Financiers)	3	Financial Services (Jersey) Law 1998
New Zealand Securities Commission	1	Financial Services (Jersey) Law 1998
KNF (Polish Financial Supervision Authority)	1	Financial Services (Jersey) Law 1998
Hellenic Capital Market Commission	2	Financial Services (Jersey) Law 1998
CBFA - Belgium	1	Financial Services (Jersey) Law 1998
<b>TOTAL</b>	<b>18</b>	



### Funds Authorisation Statistics

Category	2005	2006	2007	2008	2009	2010
<b>Jersey Funds</b>						
- Jersey CIFs	60	21	20	15	10	57
- Expert Funds	105	149	108	74	40	44
- Jersey Listed	-	-	11	6	3	1
<i>- Total CIF</i>	165	170	139	95	53	102
- VPUTs	397	311	66	54	33	64
- Other COBO only	10	20	11	16	5	7
- Total COBO	407	331	77	70	38	71
<b>Total Jersey Funds</b>	<b>572</b>	<b>501</b>	<b>216</b>	<b>165</b>	<b>91</b>	<b>173</b>
<b>Non Jersey Funds</b>						
- CIFs	20	37	29	71	52	57
- Expert Fund equivalent	21	28	35	103	20	43
<i>- Total Non Jersey CIFs</i>	42	65	64	174	72	100
- COBO	8	170	128	66	34	25
<b>Total Non-Jersey Funds</b>	<b>49</b>	<b>235</b>	<b>192</b>	<b>240</b>	<b>106</b>	<b>125</b>
<b>Total New Funds</b>	<b>621</b>	<b>736</b>	<b>408</b>	<b>405</b>	<b>197</b>	<b>298</b>

<b>Fund Services Business ("FSB") (since 14 November 2007)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
New application (full FSB)	7	44	16	20
New application (managed entity acting in respect of expert or expert equivalent fund)	12	63	19	32
<b>Total New FSB authorisations</b>	<b>19</b>	<b>107</b>	<b>35</b>	<b>52</b>
Of which: new classes of business only	-	17	7	20

### Registry Statistics

Company incorporation and limited partnership set-ups (comparative figures relate to identical period in previous years).

Period Activity	Year ended 31 December 2007		Year ended 31 December 2008		Year ended 31 December 2009		Forecast year ended 31 December 2010	
	<b>Total company formations</b>	4,050	21.6%	2,758	-31.9%	2,329	-15.6%	2,200
<b>Dissolutions</b>	2,593	1.4%	3,046	17.5%	2,650	-13.0%	2,300	-24.5%
<b>Limited Partnerships</b>	120	-25.0%	125	4.2%	94	-24.8%	75	-20.0%

Self imposed targets and achievements for the year ended 31 December 2010.

	<b>All Companies</b> %	<b>Partnerships</b> %	<b>Searches</b> %	<b>Certification</b> %	<b>Business Names</b> %
<b>Achieved</b>	98.4	99.2	100.0	100.0	98.8
<b>Target</b>	95 achieved within 2 days	95 achieved within 2 days	95 achieved within 2 days	95 achieved within 2 days	90 achieved within 2 days

## **SECTION 3: PRIORITIES FOR 2011 - 2013**

### **Overview**

In deciding on the Commission's main priorities for 2011 to 2013, the Commission has taken into account the outcome of its annual strategic Away Day held in September 2010. The Board of Commissioners and the Commission's Executive focused on identifying those essential projects which would need to continue into 2011 and beyond, and any new essential projects. The overall message from the Away Day held for Commissioners and Directors was that, for 2011, the Commission would continue to consolidate the significant progress made in recent years and ensure an effective and proportionate response to international calls for additional regulatory and supervisory measures in the aftermath of the financial crisis.

The Commission will continue to co-ordinate and assist in future assessments of Jersey's compliance with international standards, which will include the Commission's assessment of the compliance of its regulatory and supervisory framework for securities with international standards - using an updated assessment methodology to be published in 2011 by IOSCO. The Commission will also continue to monitor changes in the EU and, where appropriate, will develop compatible regimes so as to seek to achieve continued access to EU markets by firms regulated in the Island.

### **Summary of Key Priorities for 2011**

These can essentially be grouped into four thematic areas, reflecting the discussions referenced above and taking into account the Commission's key purpose and aims. These are:

- protecting investors, characterised by the supervision of the activities of regulated entities in accordance with the Commission's risk model, and developing initiatives on consumer education and a closer focus on the quality of investment advice offered by Island providers;
- protecting and enhancing the Island's reputation and integrity in commercial and financial matters, reflected in the outcomes and follow-up to independent evaluations of the Island's financial supervision capabilities and ever greater engagement with the international community;
- safeguarding the Island's best economic interests through effective engagement and consultation with Government and Industry to identify suitable opportunities for innovation and development, potential

regulatory reform consistent with international standards and securing necessary resources for legislative change where appropriate; and

- countering financial crime, primarily through further development of the Island's AML/CFT regime, particularly with the benefit of the conclusions of the 2008 IMF Review.

In this regard, the essential activities contained in the Business Plan are to:

- monitor, and respond where appropriate, to international regulatory developments, including yet further participation in international regulatory fora and development of further bi-lateral regulatory relationships;
- continue the on-site examination programme;
- publish an updated policy statement on sensitive activities, including:
  - (i) the nature of activities to be carried on,
  - (ii) where activities are to be carried on, and
  - (iii) with whom activities are to be carried on;
- take part in the IOSCO programme of assisted self-assessments once the methodology for the revised IOSCO Principles has been settled;
- conduct a self-assessment against the revised IAIS Insurance Core Principles in order to identify any revisions required to the Island's related regulatory requirements in order to continue to meet international standards; and
- conduct a second Industry Survey.

Other important projects that are considered necessary in order to reinforce the Commission's key purpose and aims are to:

- continue to work with Industry and EU decision makers on monitoring and responding to the AIFM Directive and other emerging EU initiatives, such as the setting up of EU-wide regulatory authorities for banking, securities and insurance;
- publish a funds sector specific section for the AML/CFT Handbook;
- review and update all sector specific AML/CFT Handbooks for DNFBPs;
- carry out a further "mystery shopping" exercise on investment businesses operated by banks and IFAs;
- complete changes to the Outsourcing Policy; and

- assume a greater role in sanctions development, awareness and enforcement.

There are also some projects that will be consulted on during 2011, which will include:

- proposals to introduce civil penalties for breaches of the Commission's Codes;
- proposals to introduce a consistent regime that will allow the Commission to object to the appointment (and continued appointment) of auditors of persons that are supervised under the Regulatory Laws;
- implementation of a new Accounts Order under the Banking Business (Jersey) Law 1991 and connected revisions to the Banking Business (General Provisions) (Jersey) Order 2002;
- review of the various TCB Exemption Orders to ensure that they remain fit for purpose, amended as necessary and combined into one Order;
- changes to the Codes following the completion of the Commission-wide project to ensure that the provisions within the various Codes are consistent, with any variances in Codes being on an exception basis with appropriate rationale;
- the introduction of new Codes for Funds and the revision of the Prospectuses Order;
- the monitoring of the implementation of the UK's RDR and issuing of a position paper setting out the Commission's own proposals in response, including consequent revisions that may be appropriate for our own regulatory regime, focusing on competence standards for investment advisers and commission payments; and
- continuing contribution by Registry to consultations on relevant enacted and draft legislation, such as new intellectual property laws, amendments to the Companies Law and COBO.

## **Divisional Priorities for 2011**

### **Directorate**

The 2010 Business Plan assumed a period of consolidation following the successful IMF outcome achieved in 2009, and it is expected that this will continue into 2011. However, as previously indicated, this does not imply that events driving and shaping global finance and the regulatory agenda in the wake of the 2008/09 financial crisis are stable or normal.

Consolidation continues to mean first and foremost “more and better” supervision, building on the real progress achieved by the Commission in recent years, and to reflect and measure up to the rising demand globally for greater oversight by financial services regulators in terms of both scope and depth.

Accordingly, the Commission’s Director General in 2011 will seek to achieve the continuing best possible balance of resources between day-to-day supervisory activity to be conducted on the one hand, and project and development tasks, as defined in this Business Plan and the developing international agenda, on the other.

Domestic relationship management and representative activity will continue as in previous years. This will involve the continued enhancement and development of relations with the Minister for Economic Development and other related Government Ministers and Departments, and AML/CFT Strategy Group (both chaired by Government), as well as with various Industry representative bodies. The Director General will continue his programme of speeches and presentations at numerous Industry events on matters of topical regulatory interest. There will also be coordination of the Commission’s ongoing support role in matters initiated by Government such as the Depositor Compensation Scheme, Ombudsman, draft FOI Law and/or other issues where administrative assistance or advice will be sought from the Commission.

A significant amount of the Director General’s 2011 activity will continue to be directed towards international representation and development as well as issue management, particularly given the post-crisis environment for Jersey and the ongoing challenges it represents. This will entail the development of key bilateral regulatory relationships such as with China (CBRC and CSRC); India (RBI and SEBI); and with various regulatory bodies in the Middle East, to underpin the Island’s overall efforts to develop these key future markets. In addition to these developmental relationships, effort will be directed towards consolidating important existing links with counterpart bodies in key EU Member States, as well as those in the USA (FED and SEC) and Switzerland (FINMA). The advent of three EU wide supervisory bodies, particularly the European Securities Markets Authority (ESMA), is an important new relationship dimension for the Commission to consider and develop, not least given the importance of the AIFM Directive and its future impact on Jersey.

Opportunities for speaking engagements internationally will be taken up and a range of activities undertaken in line with Jersey’s commitments to international organisations such as IOSCO and the OGBS.

In line with the experience of recent years, the Director General can expect to be involved significantly once more in a number of complex enforcement cases over the next twelve months.

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## **The Chief Financial Officer**

The Finance Team will continue the work to integrate the Supervision database for regulated entities with Open Accounts in order to facilitate the reconciliation of fee income payable to the Commission recorded in the Supervision database to the actual receipts in Open Accounts. This will be a joint project with ICT. Work will continue with the development of the internal monitoring of progress against the Business Plan on the SharePoint platform, in order to provide greater management information for the Executive and the Board of Commissioners.

## **International & Policy (“I&P”)**

I&P will continue to promote, and assist other Divisions with, the development of the regulatory and supervisory framework in which the Commission functions. It will also continue to consider the scope of the Commission’s current regulatory activities, in light of developments in the UK and elsewhere in the EU. This will include following closely the set-up of EU-wide regulatory authorities (banking, securities and insurance) and considering what effect their formation has on the Commission and, in conjunction with the Director General, what response strategy is called for in consequence.

Subject to the availability of law drafting time, I&P will prepare and deliver instructions to the Law Draftsman’s Office to replicate in Jersey legislation Titles III and IV of the EU’s Payment Services Directive. However, the scope of legislation will be limited (at least to start with) to the regulation of SEPA instruments.

I&P will assist the Enforcement Division to develop proposals for the Commission to have statutory powers to impose civil penalties in relation to breaches of Codes of Practice (the “Codes”) that are issued by the Commission. Hand in hand with this, I&P will promote an amendment to Code-making powers in the Regulatory Laws and the Supervisory Bodies Law to better reflect the “binding” nature of principles and rules that are currently set in the Codes. As part of this work on civil penalties, consideration will be given again to amending existing legislation to provide for the Commission to be able to recover some or all of its costs and disbursements due to enforcement action and investigations leading to such action. In addition, I&P will continue to co-ordinate the preparation and delivery of law drafting instructions to generally “maintain” the Regulatory Laws and the Supervisory Bodies Law. The Division will also co-ordinate publication of revised Codes following consultation on each set in the first half of 2011.

Following work carried out in 2010, I&P will consult on proposals to introduce a consistent regime that will allow it to object to the appointment (and continued appointment) of auditors of persons that are supervised under the Regulatory Laws, if it is not satisfied that the (proposed) auditor has the requisite

qualifications, skill, resources or experience for a particular audit, or if it would not be in the best interests of clients/customers of a registered person.

The Division will continue to develop and contribute to the development of legislation that sets out how companies and other legal persons are to be constituted, administered and audited, which will include:

- priority being given to publishing an updated sensitive activities policy for applications made to the Commission under the Control of Borrowing (Jersey) Order 1958 (“**COBO**”);
- continuing to negotiate and agree fees with the POB and the ICAEW for their oversight of compliance by Recognized Auditors with the Crown Dependency Audit Rules; and
- instructing the Law Draftsman’s Office on a number of consequential changes that must be made to the Regulatory Laws following adoption of the Separate Limited Partnerships (Jersey) Law 2011 and Incorporated Limited Partnerships (Jersey) Law 2011.

I&P will continue to be active in countering money laundering and terrorist financing and promoting the understanding of sanctions legislation. Subject to the availability of law drafting time, I&P will prepare instructions to update and/or amalgamate the Proceeds of Crime Law, the Drug Trafficking Law and the Terrorism Law to meet changing international standards and resolve practical difficulties experienced by the prosecuting authorities. I&P will also review the basis on which customer due diligence requirements are set to counter the proliferation of weapons, and propose such changes as may be considered appropriate. A full review will be conducted of the simplified customer due diligence measures that are available under Articles 16 and 17 of the Money Laundering Order (Jersey) Order 2008 (the “**Money Laundering Order**”).

A funds sector specific section for the AML/CFT Handbook will be published. It is expected that the section will consider:

- the application of Schedule 2 of the Proceeds of Crime Law to fund products and fund operators;
- in the case of a fund product, what or who the Money Laundering Order applies to;
- the use of the simplified due diligence concession in Article 17 of the Money Laundering Order, and customer due diligence measures to be applied by a fund operator where the concession is unavailable; and
- secondary market issues.

I&P will prepare documentation to allow the Jurats appointed to determine whether the fees proposed to be charged under the Supervisory Bodies Law are unreasonable, having regard to all the circumstances of the case.

I&P will also continue to support the Commission in its representation at meetings of international standard setters. In particular, the Division will:

- continue to actively participate in the work of the Implementation Task Force of IOSCO and the review of the 40+9 FATF Recommendations; and
- co-ordinate and assist in future assessments of Jersey's compliance with international standards, including the Commission's assessment of the compliance of its regulatory and supervisory framework for securities with international standards - using an updated assessment methodology to be published in 2011 by IOSCO. Where appropriate, I&P will co-ordinate consultation with Industry on changes to that framework and assist with the preparation of law drafting instructions (so long as drafting time is available). I&P will also help to co-ordinate a planned assisted self-assessment by IOSCO of Jersey's regulatory and supervisory framework for securities - which will be based on the Commission's own assessment. The objective of such an assessment will be to demonstrate compliance with IOSCO's Objectives and Principles of Securities Regulation.

I&P will actively follow developments in the domestic environment in which the Commission functions. This will include seeking to resolve the concerns that it has surrounding the proposed introduction of a new system in Jersey to check the credentials of persons employed in the finance sector. This will involve working with the Home Affairs Department, Law Officers' Department, and the States of Jersey Police.

## **Supervision Divisions**

The Supervision Divisions comprise the Banking, Insurance, Securities (combining the Funds Team and the IB Team), and the TCB Divisions and the AML Unit.

The majority of the work undertaken by the Supervision Divisions falls within the category of business as usual, which comprises the on-site supervision of regulated entities, off-site supervision (including the review of audited accounts and other reports), and the authorisation of applications, revocations, amendments and renewals to registrations. The on-site examination programme for regulated entities conducted by Commission staff will continue during 2011.

On-site examinations for 2011 are scheduled as follows:

Division	Themed	Focused	Discovery	Other	Total
TCB	26	4	11	0	41
Funds	12	15	6	0	33
IB	5	2	18	0	25
Banking	14	2	5	0	21
Insurance	0	10	6	0	16
AML Unit	40	27	0	23 <sup>3</sup>	90
<b>Total</b>	<b>97</b>	<b>60</b>	<b>46</b>	<b>23</b>	<b>226</b>

## Banking

Supervisory activities will continue in similar vein. The subject areas for on-site themed examination programmes will be prudential reporting and data security.

Much of the project work conducted in 2010 will continue into 2011, which will be reflected in public consultations spanning a new Accounts Order under the Banking Business (Jersey) Law 1991 and revisions to the Banking Business (General Provisions) (Jersey) Order 2002, the Codes of Practice for Deposit-taking (the "Deposit-taking Codes") and the Large Exposure Policy. A key aim will be to largely achieve in 2011 completion of all required actions arising from the recommendations of the 2009 IMF report.

Significant new projects will be the addition to the Deposit-taking Codes of the Basel Committee's recommendations on corporate governance and the compliance function, and helping establish a pan-island approach to macro economic oversight. Changes to international standards relating to banking supervision are expected to continue and will be monitored and implemented as appropriate.

Activity will also necessarily reflect increased focus on the Commission's internal workings, following the establishment of an Internal Audit post in 2010 and the re-organisation of the Commission's operational functions at the beginning of 2011.

## Insurance

The IAIS Insurance Core Principles are the subject of a major review. This will lead to the need for the Insurance Division to conduct a self-assessment against the revised IAIS Insurance Core Principles in order to identify any revisions required to the Island's related regulatory requirements so as to continue to meet international

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<sup>3</sup> Outreach visits by the AML Unit.

standards. In addition, the Division will monitor developments in respect of Solvency II and the IAIS risk-based solvency requirements to assess local impacts.

The Division will continue to support the efforts of the IAIS and the OGIS to promote and develop international regulatory standards.

Having now addressed pertinent key risks in thematic on-site examination programmes, the Division in 2011 is to focus its efforts on the risk management standards of individual firms. Examinations will therefore span a wide range of risk issues, rather than the more narrow focus of themed programmes.

## **Funds**

The Funds Supervision Unit intends to maintain the number of examinations conducted in 2011 and ensure the reports and post examination matters are issued in a timely manner. The examinations are to focus on director responsibilities, AML obligations and new entrants to the Industry, amongst other topics.

From a policy perspective, as well as finalising the Codes for Funds and the Prospectuses Order, there are a number of other initiatives planned. Discussions will continue on changes to the Collective Investment Funds (Recognized Funds) Rules 2003. The Funds Team will look at revising the Guide to open-ended unclassified collective investment funds offered to the general public (the OCIF Guide), and producing a similar document for closed-ended funds. A consultation is planned on a Client Assets Order for fund services business and work will be undertaken with I&P on a funds sector specific section of the AML/CFT Handbook.

The Commission is also likely to continue to spend a significant portion of time working with Industry on responding to the AIFM Directive.

## **Investment Business**

The IB Team will complete its ongoing programme of conduct of business-themed on-site examinations of IFAs and will report key themes and findings by way of publishing a summary report. The Team plans to undertake 25 on-site examinations of investment businesses in 2011.

A summary report will also be published setting out our conclusions and providing Industry with feedback resulting from the mystery shopping<sup>4</sup> exercise conducted in 2010 which focused on IFAs and retail banks.

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<sup>4</sup> The Market Research Society defines “mystery shopping” or “mystery customer research” as: “The use of individuals trained to experience and measure any customer service process, by acting as potential customers and in some way reporting back on their experience in a detailed and objective way.”

Following some delay experienced in 2010, the Commission launched a consumer education initiative in Q1 2011. This initiative will initially take the form of a new website concentrating on investment matters: however, it is envisaged that the scope and distribution of this material will be further extended shortly thereafter.

The Commission will issue a consultation paper outlining proposals to further align the Codes of Practice for each supervision area. The Codes of Practice for Investment Business will be included in this exercise.

The IB Team will continue to monitor the RDR and intends to issue a position paper setting out the Commission's own proposals in consequence, including revisions that may be appropriate for our own regulatory regime, focusing on competence standards for investment advisers and commission payments.

Finally, the Commission will publish some guidance on the use of pension products in 2011, specifically with regard to instances when advice is provided concerning investments to be held within a pension scheme. Pensions are not subject to direct product regulation in Jersey, but suitable advice must be provided by financial advisers in relation to such products and the underlying investments.

### **Trust Company Business ("TCB")**

A key area of focus across supervision as a whole will be to fully embrace the recently integrated operations function within the Supervision Divisions. The multiple and various projects and deliverables that have been identified over the last two years will need to be re-prioritised and their successful delivery will be a key priority for supervision. This will undoubtedly consume resources and 'business as usual' supervision activity may need to be scaled back accordingly.

On the policy front, the various TCB Exemption Orders will be reviewed to ensure that they remain fit for purpose, amended as necessary and combined into one Order. Additionally, the TCB Fees Notice and fee levying mechanism need to be re-visited to consider an increased application fee on complex applications. The review of experienced personal advisor ("EPA") grandfathering exemption is long overdue. The framework will be re-assessed, the risks analysed and decisions taken on whether a closer oversight is warranted. It should be noted that this review needed to wait until the de-minimis position on directorship services had been determined, as many of the EPAs provide exactly that service and it may be that they can now avail themselves of that exemption.

### **AML Unit**

The AML Unit will continue with its core function of the effective supervision of the DNFBP sector. The Unit will review and update all sector specific AML/CFT

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Handbooks for DNFBBs and, with I&P, establish a process such that changes in one Handbook are reflected in others - including the AML/CFT Handbook for regulated financial services businesses.

In recognising the dynamic nature of money laundering and terrorist financing, the Unit will continue to closely monitor trends and typologies in money laundering and terrorist financing internationally, to ensure that controls are in place in institutions and the Island generally to recognise and effectively deal with emerging issues. The Unit will continue, and where considered necessary, enhance its outreach activities to raise awareness of money laundering and of terrorist financing amongst all sectors of financial services business in the Island, within the Commission, and at international fora. The Unit will assume a greater role in the Island's AML/CFT Strategy Group and in maintaining the Island's AML/CFT strategy. In particular, it will highlight the risks and vulnerabilities - and appropriate mitigation measures - in conducting higher risk business. Building on the experience it has gained since its formation, the Unit will seek to establish a workshop in 2011 for agencies in the UK and the CDs charged with the supervision and regulation of DNFBBs.

Along with I&P, the AML Unit will:

- review the current legislation and regulatory requirements for MSB, noting that such business has grown increasingly complex since the legislation was introduced in 2007;
- assume a greater role in sanctions development, awareness and enforcement;
- assist the Jurats appointed under the Supervisory Bodies Law to determine whether the fees proposed to be charged to DNFBBs under that law are unreasonable having regard to all the circumstances; and
- in the event that the Law Society for Jersey and/or the Jersey Society for Chartered and Certified Accountants submit proposals for self-regulation, prepare a report for the Minister on the proposals' compatibility with international standards.

The AML Unit will continue to monitor the terrorist financing vulnerabilities associated with local NPOs.

## **Enforcement**

The Enforcement Division, in conjunction with the I&P and the Law Officers' Department, will be researching civil penalty regimes in other jurisdictions and bringing forward proposals for the introduction of civil penalties for breaches of the Commission's Codes. The aim is to stimulate debate on the subject with a view to

securing the views of the Board and consulting with the Industry in Q3 of 2011 before settling on firm proposals/law drafting instructions by the end of 2011.

During the course of 2011, the Enforcement Division aims to provide a lunch time briefing seminar (or, subject to demand, seminars) on the generic failings observed by the Division in the conduct of enforcement cases and provide the Industry with general advice on best practice. The seminar will be aimed at all principal persons within the Industry with the objective of being of practical use to assist businesses in meeting the expectations of the Commission.

The Enforcement Division operates a financial intelligence function within the Commission and during the year Enforcement will seek to strengthen the intelligence function to move towards becoming more of an intelligence led regulator.

## **Registry**

As previously stated, the key priority of the Registry is to ensure that it offers a high quality of service to its users, by managing its workflows as efficiently and effectively as possible. The Registry will, in partnership with the ICT Division, continue the range of automation and e-commerce projects, which will continue through 2011 and 2012. In addition, the Registry will promote a revised "Choosing an entity name" guide. This guide will replace the current ACCEPT brochure and also help the launch of the new Registration of Business Names (Jersey) Law 201-, which is due to come into force before 2013.

Finally, the Registry will contribute to consultations on relevant enacted and draft legislation, such as new intellectual property laws, amendments to the Companies Law and COBO. In addition to participating in the ECRF and EBR (as board member and Vice Chairman), the Director, Registry, has been re-appointed as a Director of the IACA and as Chair of IACA's International Relations Section, and will continue to promote the Companies Registry through these fora.

## **Information and Communication Technology ("ICT")**

In working with the Supervision Divisions, a focus will be to establish a close relationship with the re-organised Operations functions using an electronic project management process, to obtain greater transparency through the active involvement of stakeholders. There is a number of Supervision project initiatives that will be prioritised to exploit the potential of automating business processes, thereby enabling flows of data directly into Commission back-end systems from online submissions.

ICT will also concentrate on the renewal of the infrastructure at Castle Street, improving the resilience of systems across the range of software, which will be achieved through a new method of software deployment to every desktop. This will also involve upgrades to the operating systems, server software and the Office suite of software deployed to each user.

The ICT Division will continue with its collaborative working with Registry in developing the opportunities for new registers, improved e-commerce opportunities and the review of the registry systems to ensure the Jersey Company Registry stays very competitive and has 'best-of-breed' systems covering its scope of activities.

### **Human Resources (“HR”)**

For 2011, HR will be undertaking the projects set out below.

- HR and resource strategic review.
- Recruitment and selection strategic review.
- International secondment policy.
- Developing relationships with the FSA and within the international arenas.
- Development of in-house tutors.
- Implementation of an absence management intranet.
- Further developing the on-line PDR system.
- Rolling out a new staff handbook and undertaking a full review of contracts of employment.

### **Resourcing**

With regard to staff numbers, it is the Commission's intention to maintain the current level of headcount.

## **SECTION 4: BUDGET 2011**

### **Policy**

The Commission's policy with respect to the Budget is to:

- set fees at such a level as to cover the costs of regulating the finance industry and administering the Companies Registry, and to make an appropriate contribution to reserves;
- keep regulatory fees to a minimum by maintaining strict control of costs; and
- build up an accumulated reserve equal to six months' operating expenditure plus the average of the last five years' cost of investigations and litigation, in order to meet contingencies.

### **Summary**

As shown by the Income and Expenditure Account, the outcome for 2010 was an operating surplus of income over expenditure of £1,132,000 before accounting for investigation and litigation costs, compared with a budget surplus of £695,000. For 2011, the equivalent budget surplus is £665,000.

After accounting for investigation and litigation costs, 2010 showed a surplus of £610,000 compared with a budget surplus of £95,000. The budget surplus for 2011 is £65,000.

### **Income**

Fee income in 2010 was £12,331,000, £146,000 above budget. A significant reason for the increase was the continuing level of funds income. More than a year ago the budget took a conservative view of this sector because of economic conditions, but a fall in income did not materialise. Failure to agree the fee structure to cover the costs of the AML Unit led to a reduction in the forecast income from this sector, although the States of Jersey did make a contribution. However, fees from the other sectors of the finance industry largely exceeded expectations, offsetting most of the AML Unit fee shortfall.

Total fee income in 2011 is anticipated to be similar to the 2010 level, at £12,275,000. Although the decrease of £56,000 assumes that fees for the AML Unit will be finally agreed, a conservative approach to funds fees has again been adopted. Other fees remain constant with the exception of banking, where a reduction is likely because of the fall in the number of registrations.

Bank deposit interest received in 2010, at £37,000, was less than the budget of £60,000 because interest rates remained low throughout the year rather than increasing as had been assumed when the budget was prepared a year ago. For 2011 this income is expected to be similar on the assumption that rates will continue at their present level.

Other income of £100,000 in 2010 arose from the Industry seminars held during the year. The costs of these seminars have been included within other operational expenditure.

## **Expenditure**

Operating expenditure in 2010 was £11,336,000 against a budget of £11,550,000. The reduced spend of £214,000 has arisen partly from staff costs, which were down against budget by £102,000 because of the higher than expected number of leavers and the timing of recruitment during the year. Other significant under spends included premises costs (savings on building maintenance), training and conference costs, and depreciation of fixed assets due to the timing of their acquisition.

In 2011, the budget shows an increase in costs over 2010 of £310,000 to £11,646,000, of which the overall increase in staff costs is £304,000. A contributory factor in this latter percentage increase is the full year cost of staff recruited in 2010. It is hoped that the overall amount of all other operating expenditure can be held close to the 2010 levels.

The overall cost of investigations and litigation in 2010 was £522,000 compared with the budget of £600,000. For the 2011 budget, the same amount of £600,000 has been included, taking into account the expected future costs of existing cases and allowing for new investigations that may arise during the year. An increased control of these costs has been achieved to an extent by the increased use of in-house staff to handle these cases rather than by the employment of external service professionals.

## **RESULTS FOR THE YEARS 2010 AND 2011**

2010 produced an excess of income over expenditure of £610,000, compared with an original budget surplus of £95,000. The Commission's reserves at the end of the year amounted to £6,496,000.

For 2011, the budget shows a surplus of £65,000, with the forecast level of reserves at the end of that year being £6,561,000.

## INCOME AND EXPENDITURE FOR THE YEARS 2009 TO 2011

	2009 £000 Actual	2010 £000 <i>Budget</i>	2010 £000 Actual	2011 £000 <b>Budget</b>
Income				
a) Fee Income				
Registry	2,430	2,340	2,472	<b>2,438</b>
Banking	1,325	1,398	1,351	<b>1,264</b>
Insurance	667	674	744	<b>738</b>
General Insurance Mediation	97	108	106	<b>106</b>
Funds	3,413	3,250	3,511	<b>3,350</b>
Investment Business	1,221	1,260	1,301	<b>1,300</b>
Trust Company Business	2,253	2,453	2,513	<b>2,500</b>
Foundations	29	72	54	<b>56</b>
Recognised Auditors	-	-	19	<b>14</b>
Money Services Business	10	10	11	<b>11</b>
AML Unit	-	620	249	<b>498</b>
	<u>11,445</u>	<u>12,185</u>	<u>12,331</u>	<u><b>12,275</b></u>
b) Other Income				
Bank Interest	51	60	37	<b>36</b>
Other	-	-	100	<b>-</b>
	<u>11,496</u>	<u>12,245</u>	<u>12,468</u>	<u>12,311</u>
Operating Expenditure				
Staff costs	8,260	8,375	8,273	<b>8,577</b>
Other operating expenditure	2,939	3,175	3,063	<b>3,069</b>
	<u>11,199</u>	<u>11,550</u>	<u>11,336</u>	<u><b>11,646</b></u>
Total Operating Expenditure				
Operational surplus	297	695	1,132	<b>665</b>
Investigations/regulatory intervention/litigation	108	600	522	<b>600</b>
	<u>189</u>	<u>95</u>	<u>610</u>	<u><b>65</b></u>
Surplus/(deficit) for the year				
Accumulated Fund at beginning of year	<u>5,697</u>	<u>5,886</u>	<u>5,886</u>	<u><b>6,496</b></u>
Accumulated Fund at end of year	<u>5,886</u>	<u>5,981</u>	<u>6,496</u>	<u><b>6,561</b></u>

**PROJECTED BALANCE SHEET AS AT 31/12/2010 AND 31/12/2011**

		Actual 2010		Budget 2011
	£000	£000	£000	£000
Fixed Assets		785		943
Current Assets				
Sundry debtors	75		40	
Prepayments	438		475	
Bank balances	<u>9,752</u>		<u>9,629</u>	
		<u>10,265</u>		<u>10,144</u>
Total Assets		11,050		11,087
Current Liabilities				
Fee income received in advance	3,951		3,986	
Sundry creditors and provisions	<u>603</u>		<u>540</u>	
		<u>4,554</u>		<u>4,526</u>
Total Assets less Current Liabilities		<u>6,496</u>		<u>6,561</u>
Accumulated Reserve		<u>6,496</u>		<u>6,561</u>