

States
of Jersey 



ANTI-MONEY LAUNDERING/ COUNTERING THE FINANCING OF TERRORISM STRATEGY GROUP

FEEDBACK ON CONSULTATION PAPER NO. 1 2007

REVISION TO THE DEFINITION OF FINANCIAL SERVICES BUSINESS

**Proposed revisions to Schedule 2 of the Proceeds of Crime
(Jersey) Law 1999 to update the definition of financial
services business**

CONSULTATION FEEDBACK

This paper reports on the responses received by the Anti-Money Laundering/Countering the Financing of Terrorism Strategy Group (“**the AML/CFT Strategy Group**”) on Consultation Paper No. 1 2007: Revision to the definition of Financial Services Business.

The AML/CFT Strategy Group would like to thank all respondents for the time they have taken to consider its proposals and for the feedback provided, and issues highlighted, in relation to these proposals. Due to time constraints, the AML/CFT Strategy Group does not propose to reply individually to all respondents, but invites any respondent or interested party to contact it should there be an area requiring further discussion.

A copy of the responses received can be obtained by contacting the AML/CFT Strategy Group.

Further enquiries concerning the consultation may be directed to:

Andrew Le Brun

AML/CFT Strategy Group Secretariat,
c/o Jersey Financial Services Commission,
PO Box 267,
14-18 Castle Street,
St Helier,
Jersey,
JE4 8TP

Telephone: +44 (0) 1534 822065

Facsimile: +44 (0) 1534 822001

Email: a.lebrun@jerseyfsc.org

CONSULTATION FEEDBACK

CONTENTS

	Pages
1 Overview	3
2 Summary of responses received	4-8
3 Next steps	9

APPENDIX

A List of respondents to the consultation paper	10
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1 - OVERVIEW

BACKGROUND

- 1.1 The AML/CFT Strategy Group published Consultation Paper No. 1 2007: Revision to the definition of Financial Services Business (the “**consultation paper**”) in May 2007. The purpose of the consultation paper was to consult on an update to Schedule 2 (“**Schedule 2**”) of the Proceeds of Crime (Jersey) Law 1999 to incorporate those additional business sectors now listed by the Financial Action Task Force (“**FATF**”) in its revised 40 Recommendations on Money Laundering and Terrorist Financing.
- 1.2 Businesses in the sectors listed in Schedule 2 are required to comply with the Money Laundering (Jersey) Order 1999. That Order requires businesses to have in place systems and training to forestall and prevent money laundering and terrorist financing.
- 1.3 The FATF is the inter-governmental body responsible for setting international standards for combating money laundering and the financing of terrorism.

FEEDBACK ON THE CONSULTATION PAPER PROPOSALS

- 1.4 The AML/CFT Strategy Group received comments from five representative bodies. A summary of the responses is presented in Section 2 of this feedback paper; the full responses can be obtained by contacting the Commission.
- 1.5 A list of the respondents is given in Appendix A.
- 1.6 The AML/CFT Strategy Group was pleased to see that the proposals received general support. Whilst respondents had comments on points of detail (see Section 2), all were supportive of the proposals overall, recognising the need for the Island to meet international standards on the prevention and detection of money laundering and the financing of terrorism.

2 – SUMMARY OF RESPONSES RECEIVED

RESPONSES TO QUESTIONS POSED IN THE CONSULTATION PAPER

- 2.1 The summarised responses received by the AML/CFT Strategy Group have been presented below following each question (references are to paragraphs in the consultation paper). Where respondents provided responses relevant to a question posed, but not in direct response to that question, this feedback has been consolidated with other feedback received on that issue. Where more general feedback was received from respondents that was not directly connected with questions posed in the consultation paper, this feedback has been summarised in paragraph 2.3.
- 2.2 How the AML/CFT Strategy Group intends to address the matters raised in the responses is set out in italicised text.

PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
4.5.1	<p data-bbox="300 1106 1396 1205">Do you agree that this definition for the legal sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.</p> <p data-bbox="300 1245 1396 1344">None of the respondents to the consultation paper offered any comment on the definition. However, earlier correspondence seemed to suggest a preference for the FATF definition.</p> <p data-bbox="300 1384 1396 1599"><i>The AML/CFT Strategy Group will incorporate into the proposed revised Schedule 2 the definition for the legal sector used in the recently published UK’s Money Laundering Regulations 2007. (The draft text for the legal sector reference in Schedule 2 in the consultation paper was based on that in the consultation draft of the UK Regulations. The legal sector reference has since been modified slightly in the final published version of the Regulations, although the substance remains the same).</i></p>
4.10.1	<p data-bbox="300 1675 1396 1774">Do you agree that this definition for the accountancy and audit sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.</p> <p data-bbox="300 1814 1396 1877">None of the respondents to the consultation paper offered any comment on the definition.</p> <p data-bbox="300 1917 1396 1984"><i>The AML/CFT Strategy Group will incorporate into the proposed revised Schedule 2 the definition for the accountancy and audit sector as proposed in the consultation paper.</i></p>

PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
4.17.1	<p data-bbox="300 360 1402 465">Do you agree that this definition and approach for the estate agency sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.</p> <p data-bbox="300 501 1402 568">None of the respondents to the consultation paper offered any comment on the definition.</p> <p data-bbox="300 604 1402 678"><i>The AML/CFT Strategy Group will incorporate into the proposed revised Schedule 2 the definition for the estate agency sector as proposed in the consultation paper.</i></p>
4.21.1	<p data-bbox="300 752 1402 857">Do you agree that this approach for dealers in high value goods (“HVGDs”) enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.</p> <p data-bbox="300 925 1402 992">Respondents were broadly supportive of the proposed approach for dealers in high value goods.</p> <p data-bbox="300 1037 1402 1395">One representative body appeared to have misunderstood the proposed registration requirements and had responded on the presumption that all HVGDs would have to register with the relevant supervisory authority regardless of their policy on accepting cash payments. In summary, the Strategy Group’s proposal is that if a HVGD never accepts cash payments (whether in a single transaction or linked transactions) of €15,000 or more they will fall outside of the proposed revised Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, will consequently not be subject to the Money Laundering (Jersey) Order 1999, and would not be required to register with the relevant designated supervisory authority. (See paragraph 4.20 in the consultation paper for more detail.)</p> <p data-bbox="300 1429 1402 1709">In addition, the respondent seemed to have concluded that the proposals would result in Schedule 2 containing a defined list of activities that would be classed as HVGDs (eg, “car dealers”, “jewellers”, etc). That will not be the case. The proposal is that Schedule 2 will follow the approach in the United Kingdom which is to include in Schedule 2 - “High value dealers [which] means persons who trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least €15,000 in total, whether the transaction is executed in a single operation or in several operations which appear to be linked”.</p> <p data-bbox="300 1742 1402 1814"><i>The AML/CFT Strategy Group will adopt the proposed approach for HVGDs as set out in the consultation paper.</i></p>

PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
4.21.2	<p data-bbox="295 324 1388 425">Do you support the FATF threshold of €15,000 (or sterling equivalent), or a lower Jersey threshold of £5,000, for AML/CFT requirements to apply where dealers in high value goods accept cash? Please explain your view.</p> <p data-bbox="295 504 1157 533">Respondents were not supportive of a threshold of below €15,000.</p> <p data-bbox="295 571 1388 672"><i>The AML/CFT Strategy Group will set the threshold at €15,000. However, it intends to review the threshold level periodically in the light of experience in money laundering/terrorist financing trends and developments in international standards.</i></p>
4.24.1	<p data-bbox="295 750 1388 817">Do you agree that casinos should be listed in Schedule 2? Please explain your view.</p> <p data-bbox="295 851 1388 918">The one respondent to this question agreed that casinos should be listed in Schedule 2.</p> <p data-bbox="295 952 1332 985"><i>The AML/CFT Strategy Group will include casinos in the proposed revised Schedule 2.</i></p>
4.29.1	<p data-bbox="295 1064 1388 1198">Do you agree that this approach for providing for circumstances in which disclosure of information subject to professional privilege is not required enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.</p> <p data-bbox="295 1243 1388 1310">None of the respondents to the consultation paper offered any comment on this question.</p> <p data-bbox="295 1344 1388 1411"><i>The AML/CFT Strategy Group will adopt the proposed approach set out in the consultation paper.</i></p>
5.8.1	<p data-bbox="295 1489 1388 1590">Do you agree that the proposed amendments to the definitions of regulated financial service business within Schedule 2 are appropriate? Please explain your view.</p> <p data-bbox="295 1624 1388 1691">None of the respondents to the consultation paper offered any comment on this question.</p> <p data-bbox="295 1736 1388 1803"><i>The AML/CFT Strategy Group will adopt the proposed amendments to the definitions of regulated financial service business as set out in the consultation paper.</i></p>

PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
5.8.2	<p data-bbox="295 324 1388 425">Do you agree that it is appropriate to lower the threshold at which customers of a money service business are to be identified from £10,000 to £1,000 in a single or linked transaction? Please explain your view.</p> <p data-bbox="295 459 1308 504">The one respondent to this question supported the lowering of the threshold.</p> <p data-bbox="295 526 1396 750"><i>The AML/CFT Strategy Group intends to lower the threshold from £10,000 but to €1,000 instead of £1,000. The reason for this is to ensure consistency with the Community Provisions (Wire Transfers) (Jersey) Regulations 2007 that came into force on 23 July 2007. Those Regulations require a money service business that is transferring funds to verify the identity of its customer where a transfer of €1,000 is to be made (either in a single transaction or in aggregate through a series of linked transactions).</i></p>
5.13.1	<p data-bbox="295 817 1388 851">Do you agree with the JFSC’s view? If you do not, please explain why.</p> <p data-bbox="295 884 1396 952">The one respondent to this question supported the proposed exemptions from Schedule 2.</p> <p data-bbox="295 985 1396 1064"><i>The AML/CFT Strategy Group intends to implement the proposed exemptions from Schedule 2.</i></p>
5.13.2	<p data-bbox="295 1131 1388 1198">Do you consider that any activities additional to those listed in Appendix F should be excluded from Schedule 2?</p> <p data-bbox="295 1232 1396 1310">The one respondent to this question did not identify any additional activities that should be excluded from Schedule 2.</p> <p data-bbox="295 1344 1396 1422"><i>The AML/CFT Strategy Group will exclude from the revised Schedule 2 those activities set out in Appendix F of the consultation paper.</i></p>
5.16.1	<p data-bbox="295 1489 1388 1590">Do you agree that the proposed amendments to the definitions of unregulated financial services businesses within Schedule 2 are appropriate? Please explain your view.</p> <p data-bbox="295 1624 1396 1702">None of the respondents to the consultation paper offered any comment on this question.</p> <p data-bbox="295 1736 1396 1803"><i>The AML/CFT Strategy Group will adopt the proposed amendments to the definitions of unregulated financial services business as set out in the consultation paper.</i></p>

**PAPER
REF.**

QUESTION AND SUMMARY OF RESPONSES

5.20.1

Do you think that the AML/CFT Strategy Group should provide for persons (but not casinos, estate agents, high value goods dealers, lawyers and accountants) carrying on business on an occasional or very limited basis to be exempt from the application of Schedule 2? If so, how should “occasional or very limited” be measured?

The one respondent to this question was not supportive of attempting to craft an exemption for carrying on business on an “occasional or very limited basis”.

The AML/CFT Strategy Group will not attempt to provide for exemptions for the carrying on of business on an occasional or very limited basis.

5.23.1

Is separate or sector specific guidance required for the activities which you conduct? Please explain your views and list the activities conducted.

The respondents to this question felt that sector specific guidance should be issued.

On the assumption that the AML/CFT Strategy Group’s proposals for ‘designated supervisory authorities’ to oversee businesses covered by Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 go ahead, it will oversee the issuing of sector specific guidance and regulatory requirements by such authorities.

RESPONDENTS’ OTHER COMMENTS

2.3 One respondent made the point that there should be an exercise to educate the sectors that would fall within Schedule 2 for the first time in their obligations under the Money Laundering (Jersey) Order 1999.

The AML/CFT Strategy Group will give consideration as to how the sectors to be added to Schedule 2 can be educated in the obligations they will have. One possibility that may be explored is ‘workshops’ for these sectors that would explain the key elements of the Money Laundering (Jersey) Order 1999. Another is the publication of a Frequently Asked Questions (FAQs) help-sheet.

The Jersey Notaries Society indicated that due to the limited nature of the work undertaken by notaries in Jersey they were unlikely to carry out activities that would fall within the scope of Schedule 2.

The AML/CFT Strategy Group will be discussing directly with the Society the relevance of Schedule 2 to local notaries.

3 NEXT STEPS

- 3.1 Having considered the feedback received, the AML/CFT Strategy Group has finalised law drafting instructions for the preparation of an amended Schedule 2. It is the intention of the AML/CFT Strategy Group to request the Minister for Treasury and Resources to present and lodge au Greffe draft Regulations (made under the Proceeds of Crime (Jersey) Law 1999) incorporating the amended Schedule 2, for debate by the States on 6 November 2007. It is proposed that the draft Regulations will come into force on 1 January 2008, enabling businesses to prepare to comply with the requirements of the Money Laundering (Jersey) Order 1999, or the revised requirements of the draft Money Laundering (Jersey) Order 200-, if in force at this time. (Once a final draft of the latter Order is available it will be circulated to the respondents to Consultation Paper No. 1 before being put to the Minister for Treasury and Resources for approval.¹)
- 3.2 Additionally, the AML/CFT Strategy Group will recommend that the Minister for Treasury and Resources make an amendment to the Money Laundering Order, to come into force at the same time as the draft Regulations referred to above, to incorporate provisions providing for circumstances where information otherwise subject to disclosure requirements need not be disclosed for reasons of professional privilege, to provide for thresholds for the identification of casino customers, and to provide any specific requirements necessary for low risk customers of estate agents.

¹ Readers may wish to refer to the consultation draft of the Money Laundering (Jersey) Order 200- that was issued in May 2006. See [http://www.jerseyfsc.org/pdf/Hbk_cp_app\(a\).pdf](http://www.jerseyfsc.org/pdf/Hbk_cp_app(a).pdf). That consultation draft is currently being updated.

APPENDIX A

LIST OF RESPONDENTS TO THE CONSULTATION

- Institute of Directors (Jersey branch)
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Finance Limited
- Jersey Motor Trades Federation
- Jersey Notaries Society