

States  
of Jersey



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

## **FEEDBACK ON CONSULTATION PAPER NO. 2 2007**

### **OVERSEEING COMPLIANCE WITH LEGISLATION TO DETECT AND PREVENT MONEY LAUNDERING AND THE FINANCING OF TERRORISM**

**A proposed legal framework to oversee business and  
activities covered by Schedule 2 of the Proceeds of Crime  
(Jersey) Law 1999**

# 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. 2 2007: Overseeing compliance with legislation to detect and prevent money laundering and the financing of terrorism.

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:

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# CONSULTATION FEEDBACK

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# 1 - OVERVIEW

## BACKGROUND

- 1.1 In May 2007, the AML/CFT Strategy Group published Consultation Paper No. 2 2007: Overseeing compliance with legislation to detect and prevent money laundering and the financing of terrorism (the “**consultation paper**”).
- 1.2 The purpose of the consultation paper was to consult on a proposed legal framework to provide for supervisory authorities to oversee the compliance of businesses subject to Schedule 2 (“**Schedule 2**”) of the Proceeds of Crime (Jersey) Law 1999 with legislation in Jersey to detect and prevent money laundering and the financing of terrorism.
- 1.3 The Island needs such a legal framework to enable it to implement an oversight regime that will meet Financial Action Task Force (“**FATF**”) recommendations. 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 six 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
5.14.1	<p data-bbox="300 1104 1134 1133"><b>What are your views on the proposed registration framework?</b></p> <p data-bbox="300 1173 1222 1202">Respondents were supportive of the proposed registration framework.</p> <p data-bbox="300 1243 1394 1666"><i>The AML/CFT Strategy Group intends to proceed with the preparation of draft legislation that will provide for a registration framework as set out in the consultation paper - but with one exception. On further reflection, the AML/CFT Strategy Group has decided to simplify the framework by reducing it to two levels rather than three. This will be achieved by removing the proposed Level 1 registration that would have covered businesses that are prudentially supervised by the Jersey Financial Services Commission. Such businesses will be subject to a fit and proper test under regulatory legislation and it was felt that duplicating such a test in the proposed AML/CFT oversight legislation would unnecessarily complicate and lengthen the legislation. However, the proposed powers and sanctions available to a designated supervisory authority under the proposed oversight legislation will still be exercisable in respect of prudentially supervised businesses (as was proposed in the consultation paper).</i></p>
5.14.2	<p data-bbox="300 1742 1394 1843"><b>Specifically, do you think that the registration framework should extend vetting to include Level 3 registration – perhaps in line with Guernsey’s proposals to require controllers, directors and managers of OFSBs to be “fit and proper”?</b></p> <p data-bbox="300 1883 1394 1946">None of the respondents supported the extension of “fit and proper” vetting to include Level 3 businesses.</p> <p data-bbox="300 1986 1394 2020"><i>The AML/CFT Strategy Group will proceed with its original proposals for Level 3</i></p>

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PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
	<i>applicants. These do not require a “fit and proper” test for such applicants.</i>
5.23.1	<b>What are your views on the proposed registration process?</b>
	Respondents commented specifically on two particular aspects of the proposed registration process.
	The first was on the fee for registration and the annual fee to cover the cost of oversight by the relevant supervisory authority. The representative bodies of three sectors to be subject to the Money Laundering (Jersey) Order 1999 and oversight for compliance therewith for the first time suggested that no fees should be levied on businesses in the sector they represent.
	<i>The AML/CFT Strategy Group considers that it would be unfair for any sector to be ‘exempted’ from the need to pay fees. To do so would effectively result in other registered businesses providing a cross-subsidy. Notwithstanding this, the Strategy Group is mindful of the need for fees to be reasonable and it is for this reason that the setting of fees would be subject to a formal consultation and appeal process (see paragraph 5.17 of the consultation paper). The level of fees for each sector will reflect the risks from an AML/CFT perspective in that sector and the attendant cost of oversight by the supervisory authority. Consequently, lower-risk sectors will be charged lower fees.</i>
	The second aspect commented upon was the practicalities of the registration process. Respondents were keen for the registration material to be simple to complete and not require an excessive amount of information to be provided.
	<i>Whilst the practicalities of the registration process were necessarily outside of the scope of the consultation paper (which concentrated on the legal framework for the registration process and other aspects of the proposed oversight regime) the AML/CFT Strategy Group recognises that the registration process should not become a burdensome bureaucratic process for applicants. Whilst it will be for each designated supervisory authority to determine exactly what information it will need from applicants the AML/CFT Strategy Group will encourage the authorities to minimise the burden on businesses.</i>
	<i>Understandably, for those businesses subject to a vetting test, the information required will be greater than for those businesses that will not be subject to pre-registration vetting. For Level 3 businesses, which will not have to be vetted, the AML/CFT Strategy Group anticipates that the information that will need to be filed upon registration is unlikely to extend beyond basic information on the name and legal structure of the business, contact details, what activities the business undertakes and where it operates from.</i>
5.36.1	<b>Are you content with the proposed powers that would be available to a designated supervisory authority? If not, please explain why.</b>
	The majority of respondents to this question indicated that they were broadly content with the proposed range of powers. However, one respondent queried

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## QUESTION AND SUMMARY OF RESPONSES

whether it was appropriate for all of the powers to be available for all three levels of registration and particularly whether the use of the powers should be restricted in respect of sectors which could be deemed low-risk from an AML/CFT perspective.

Another respondent felt that a fee of a level sufficient to build up a contingency fund would not be appropriate unless it could be shown that any investigation by the supervisory authority had been instigated for a good reason.

*The AML/CFT Strategy Group recognises that the proposed powers are extensive. However, in using any of the powers available to it, a designated supervisory authority would have a legal obligation to use them in a reasonable and proportionate manner.*

*The AML/CFT Strategy Group considers that all of the powers should be available even in respect of sectors that would generally be regarded as low-risk. Even in low-risk sectors there will always be an exception to the general rule. Were the proposed range of powers not to be available in respect of all businesses, a supervisory authority could find that it was unable to investigate effectively.*

*It is also important to remember that the use of a power by a supervisory authority can be challenged. A person aggrieved by the use, or intended use of a power, would be able to apply to the Royal Court to determine whether the authority's use of the power was appropriate. Where the court determined that it was not, it could make a restraining order.*

*The power to set fees at a level to build up a contingency fund is essential so that a supervisory authority is not hampered from taking effective supervisory action due to a lack of funds. The AML/CFT Strategy Group recognises that overseen businesses will want to be reassured that any contingency fund that is built up is not excessive for the authority's needs. In this regard, the AML/CFT Strategy Group would draw attention to two particular aspects of the proposals in the consultation paper. The first is that the setting of fee levels would be subject to a formal consultation and appeal process (see paragraph 5.17 in the consultation paper). The second is that each supervisory authority would be accountable to the States for its oversight activities and will be required to produce an annual report on those activities (which will include the financial aspects of them) that would be laid before the States.*

*The AML/CFT Strategy Group does not propose to make any changes to the proposed range of powers.*

PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
5.36.2	<p data-bbox="295 324 1388 392"><b>Do you consider that a designated supervisory authority should have additional powers? If so, please describe them and explain why.</b></p> <p data-bbox="295 459 1388 526">The respondents to this question considered that no additional powers were necessary.</p> <p data-bbox="295 571 1388 638"><i>The AML/CFT Strategy Group does not propose to seek additional powers for supervisory authorities.</i></p>
5.46.1	<p data-bbox="295 716 1388 817"><b>Is it appropriate to model the proposed sanctions on those set out in the four regulatory laws administered by the Jersey Financial Services Commission? If not, please explain why.</b></p> <p data-bbox="295 862 1388 1030">The majority of respondents to this question indicated that they were broadly content with the proposed range of sanctions being modelled on those available to the Jersey Financial Services Commission. However, one respondent queried whether the power of intervention or restraining orders were necessary to achieve adequate supervision of Level 3 businesses.</p> <p data-bbox="295 1075 1388 1243"><i>The AML/CFT Strategy Group recognises that the proposed sanctions are extensive. However, in using any of the sanctions available to it, a designated supervisory authority would have a legal obligation to use them in a reasonable and proportionate manner. In addition, an aggrieved person would be able to appeal to the Royal Court against the use of a sanction, in line with human rights legislation.</i></p> <p data-bbox="295 1288 1388 1456"><i>The use of the power of intervention or restraint in respect of all three levels of business would, in the Strategy Group's view, be subject to adequate safeguards. Neither power would be able to be used independently by a supervisory authority. Only the Royal Court would be able to make a restraining injunction or an intervention order (on the application of a supervisory authority).</i></p> <p data-bbox="295 1500 1388 1568"><i>The AML/CFT Strategy Group does not propose to make any changes to the proposed range of sanctions.</i></p>
5.46.2	<p data-bbox="295 1635 1388 1702"><b>Are you content with the proposed sanctions that would be available to a designated supervisory authority? If not, please explain why.</b></p> <p data-bbox="295 1747 1388 1780">Please refer to the commentary on responses to question 5.46.1</p>
5.46.3	<p data-bbox="295 1848 1388 1915"><b>Do you consider that a designated supervisory authority should have additional sanctions? If so, please describe them and explain why.</b></p> <p data-bbox="295 1982 1388 2020">The one respondent to this question considered that no additional sanctions were</p>

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**QUESTION AND SUMMARY OF RESPONSES**

necessary.

*The AML/CFT Strategy Group does not propose to seek additional sanctions for supervisory authorities.*

**RESPONDENTS' OTHER COMMENTS**

- 2.3 One respondent emphasised the need for designated supervisory authorities to use a risk-based approach to supervision.

*The AML/CFT Strategy Group recognises that designated supervisory authorities should use a risk-based approach to supervision and its proposals will provide the flexibility for that to be achieved.*

## 3 NEXT STEPS

- 3.1 The AML/CFT Strategy Group has issued instructions to the Law Draftsman to draft the necessary legislation to provide for supervisory authorities to oversee the compliance of businesses subject to Schedule 2 with legislation in Jersey to detect and prevent money laundering and the financing of terrorism. The draft legislation is currently being prepared.
- 3.2 If possible, the draft legislation will be lodged for debate by the States on 6 November 2007, otherwise it will be lodged for debate in January 2008.
- 3.3 The extent of consultation on the text of the draft legislation will be dependent upon the time available to the AML/CFT Strategy Group having regard to the timing of the assessment visit of the International Monetary Fund to the Island (see paragraph 1.7 of the consultation paper).

# APPENDIX A

## LIST OF RESPONDENTS TO THE CONSULTATION

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