

CONSULTATION PAPER NO. 1 2003

Consultation Paper 2003-01

MONEY SERVICES BUSINESS

Oversight of bureaux de change, money transmitters,
and cheque cashers

CONSULTATION PAPER

The Jersey Financial Services Commission invites comments on this Consultation Document. Comments should reach the Commission by **20 June 2003**.

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CONSULTATION PAPER

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1 - EXECUTIVE SUMMARY

OVERVIEW

1.1 Whilst those in the business of a bureau de change, the business of providing cheque cashing facilities, and the business of transmitting or receiving funds by wire or other electronic means (collectively referred to as money services businesses) are already required by the Money Laundering (Jersey) Order 1999 (Money Laundering Order) to have systems and training to forestall and prevent money laundering¹, there is no body responsible for ensuring that the Money Laundering Order is implemented effectively. This puts the Island at variance with international standards. Those standards require governments to ensure that money changing and transmission operations:

- effectively implement legislation and regulations to counter money laundering and the financing of terrorism; and
- cannot be owned or controlled by those who are engaged in money laundering or the financing of terrorism,

where that activity is a primary or substantial part of their business.

1.2 This consultation paper considers what changes, if any, should be made to the existing anti-money laundering framework for money services businesses, with a view to ensuring that the Island complies fully with international standards to combat money laundering and the financing of terrorist activities.

INTERNATIONAL BACKGROUND

1.3 The Financial Action Task Force on Money Laundering (FATF) states that governments should ensure that non-bank financial institutions, including bureaux de change, are subject to the same anti-money laundering laws or regulations as all other financial institutions and should ensure that these laws or regulations are implemented effectively. More recently it has also called for governments to take measures to ensure that those providing a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, are licensed or registered.

1.4 The United Kingdom (UK) has recently introduced legislation to supervise money services business as part of its efforts to combat money laundering and terrorist financing. Guernsey and the Isle of Man have also introduced legislation.

1. Article 2 of the Money Laundering (Jersey) Order 1999 requires money services businesses to implement a system of anti-money laundering controls, including: appointing a money laundering reporting officer; identifying customers where a single transaction exceeds £10,000 or where there is an ongoing business relationship; keeping records; and having systems in place to facilitate the reporting of suspicious transactions. Businesses must also take appropriate measures to make employees aware of these procedures and enactments relating to money laundering, and provide employees with training to recognise and handle transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering.

1 - EXECUTIVE SUMMARY - CONTINUED

WHAT IS PROPOSED?

1.5 A number of changes to the Island's anti-money laundering framework for money services businesses are proposed. These anticipate some form of licensing or registration of activities and provide for oversight of the money services business sector to ensure that the requirements of the Money Laundering Order are followed.

WHO WOULD BE AFFECTED?

1.6 Those conducting the following activities would be affected:

- Foreign currency exchange. This will include post offices, travel agents, and hotels.
- Money transmission (or any representation of money, such as travellers' cheques), whereby money or equivalent value are received for the purposes of a money transfer in order to make this money or equivalent value payable or cause it to be payable to a third party in another geographic location, whether or not in the same form. This will include banks and those offering money transfer services such as Western Union and Moneygram.
- Third party cheque cashing. This will include shops that, by arrangement with a bank, cash cheques made payable to customers, e.g. cashing pay cheques.

1.7 Changes proposed are likely to have a minimal effect on those businesses which are already regulated under one of the Commission's four regulatory laws. It intended that such businesses would be required to do no more than to declare to the Commission the existence of a money services business activity.

2 - CONSULTATION

- 2.1 This consultation paper continues a dialogue started with money services businesses in September 2002, when a number of selected institutions were requested to provide information to the Commission on their money services business activity.
- 2.2 The Commission has issued this paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998, as amended (Financial Services Commission Law), under which the Commission *"may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside the Island as it considers appropriate"*.
- 2.3 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.4 To assist in analysing responses to the consultation paper, respondents are asked to:
- prioritise comments and to indicate their relative importance; and
 - respond as specifically as possible and, where they refer to costs, to quantify those costs.

3 –BACKGROUND

INTERNATIONAL STANDARDS: FINANCIAL ACTION TASK FORCE

- 3.1 The anti-money laundering measures which the FATF has agreed to implement are reflected in the scope of its 40 Recommendations. These were originally drawn up in 1990 and last revised in 1996. The 40 Recommendations set out the basic framework for international anti-money laundering efforts and they are designed to be of universal application. They cover the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation.
- 3.2 In 2001, the FATF expanded its mission beyond money laundering to focus also on the worldwide effort to combat terrorist financing. It has issued a set of eight Special Recommendations on terrorist financing.

Bureaux de change

- 3.3 Recommendation 8 states that a number of the 40 Recommendations should apply not only to banks, but also to non-bank financial institutions. It states:

“Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries, for example bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively”.

- 3.4 The Interpretative Note to Recommendations 8 and 9 states:

“Bureaux de change are an important link in the money laundering chain since it is difficult to trace the origin of the money once it has been exchanged. Typologies exercises conducted by the FATF have indicated increasing use of bureaux de change in laundering operations. Hence it is important that there should be effective counter-measures in this area. This Interpretative Note clarifies the application of FATF Recommendations concerning the financial sector in relation to bureaux de change and, where appropriate, sets out options for their implementation.”

“To counter the use of bureaux de change for money laundering purposes, the relevant authorities should take measures to know the existence of all natural and legal persons, who in a professional capacity, perform foreign exchange transactions.

As a minimum requirement, FATF members should have an effective system whereby the bureaux de change are known or declared to the relevant authorities (whether regulatory or law enforcement). One method by which this could be achieved would be a requirement on bureaux de change to submit to a designated authority, a simple declaration containing adequate information on the institution itself and its management. The authority could either issue a receipt or give a tacit authorisation: failure to voice an objection being considered as approval.

3 - BACKGROUND - CONTINUED

FATF members could also consider the introduction of a formal authorisation procedure. Those wishing to establish bureaux de change would have to submit an application to a designated authority empowered to grant authorisation on a case-by-case basis. The request for authorisation would need to contain such information as laid down by the authorities but should at least provide details of the applicant institution and its management. Authorisation would be granted, subject to the bureau de change meeting the specified conditions relating to its management and the shareholders, including the application of a "fit and proper test". Another option which could be considered would be a combination of declaration and authorisation procedures. Bureaux de change would have to notify their existence to a designated authority but would not need to be authorised before they could start business. It would be open to the authority to apply a 'fit and proper' test to the management of bureaux de change after the bureau had commenced its activity, and to prohibit the bureau de change from continuing its business, if appropriate.

Where bureaux are required to submit a declaration of activity or an application for registration, the designated authority (which could be either a public body or a self-regulatory organisation) could be empowered to publish the list of registered bureaux de change. As a minimum, it should maintain a (computerised) file of bureaux de change. There should also be powers to take action against bureaux de change conducting business without having made a declaration of activity or having been registered."

"To ensure effective implementation of anti-money laundering requirements by bureaux de change, compliance monitoring mechanisms should be established and maintained. Where there is a registration authority for bureaux de change or a body which receives declarations of activity by bureaux de change, it could carry out this function. But the monitoring could also be done by other designated authorities (whether directly or through the agency of third parties such as private audit firms). Appropriate steps would need to be taken against bureaux de change which failed to comply with the anti-laundering requirements."

- 3.5 The Interpretative Note is intended to cover those institutions which carry out retail foreign exchange operations. Money changing operations which are ancillary to the main activity of a business are excluded from the scope of the Note.

Money transmission

- 3.6 FATF Special Recommendation VI on alternative remittances states:

"Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions."

3 - BACKGROUND - CONTINUED

3.7 The Interpretative Note to Special Recommendation VI states that it should apply to all persons (natural or legal), which accept cash, cheques, other monetary instruments, or other stores of value in one location and pay a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer, or through a clearing network to which the money/value transfer service belongs, where that activity is a primary or substantial part of their business, or when such activity is undertaken on a regular or recurring basis, including as an ancillary part of a separate business enterprise.

3.8 The Interpretative Note states:

“Jurisdictions should designate an authority to grant licences and/or carry out registration and ensure that the requirement is observed. There should be an authority responsible for ensuring compliance by money/ value transfer services with the FATF Recommendations (including the Eight Special Recommendations). There should also be effective systems in place for monitoring and ensuring such compliance. This interpretation of Special Recommendation VI (i.e., the need for designation of competent authorities) is consistent with FATF Recommendation 26.”

3.9 The Recommendation does not apply to legal persons already licensed as financial institutions by a jurisdiction, which perform money transmission activities and which are already subject to the full range of applicable obligations under the FATF 40 Recommendations and the eight Special Recommendations.

IMPLEMENTATION OF INTERNATIONAL STANDARDS

3.10 The UK and Isle of Man have already taken action to follow the above Recommendations. They have introduced legislation which requires all bureaux de change, those transmitting money, and those cashing cheques made payable to customers (collectively referred to as money services businesses) to register with Customs. Such a system brings the UK into line with practices already in place in other European Union (EU) Member States.

3.11 Bureaux de change in Gibraltar have operated under a licensing and supervisory regime since 1986. The regime includes annual onsite visits by HM Customs to assess compliance with anti-money laundering controls. Following a recent review of Gibraltar, the International Monetary Fund has recommended to the Government of Gibraltar that its Financial Services Commission take over supervision of this sector.

3.12 Guernsey has also enacted legislation that requires money services businesses to provide information on their activities to the Guernsey Financial Services Commission.

INDUSTRY PROFILE

3.13 No statistics are available on the size of the money services business sector in Jersey.

3 - BACKGROUND - CONTINUED

- 3.14 The bureau de change market is dominated by the major clearing banks, Jersey Post, and a handful of travel agents, two of which are part of national travel agency operations.
- 3.15 Whilst money transmission is dominated by licensed deposit-takers, both Moneygram and Western Union have agencies in the Island. Jersey Post also offers money transfer facilities from Jersey to Portugal and Madeira. In some jurisdictions, informal systems have traditionally operated outside the regulated financial sector and are frequently referred to as *alternative remittance systems* or *underground (or parallel) banking systems*. The Commission is not aware of any such systems operating in Jersey. **Respondents are requested to provide any information that they might have to the contrary.**
- 3.16 At least one local business provides a significant cheque cashing facility to its customers.

JERSEY'S FINANCIAL SERVICES LEGISLATION

- 3.17 Jersey's financial sector is governed by four separate regulatory laws: The Collective Investment Funds (Jersey) Law 1988, as amended, the Banking Business Law (Jersey) Law 1991, as amended, the Insurance Business (Jersey) Law 1996, as amended, and the Financial Services (Jersey) Law 1998, as amended (Financial Services Law). The Financial Services Law currently regulates investment and trust company business.
- 3.18 Amongst other powers, this regulatory legislation enables the Commission to register or refuse to register business activities, revoke registration, set conditions on registration, issue directions to require anything to be done or omitted to be done by a registered person, issue public statements, and require the provision of information and documents.

THE COMMISSION

- 3.19 The Commission is a statutory body corporate established under the Financial Services Commission Law.
- 3.20 The Commission's guiding principles require it to have regard to:
- the reduction of risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within the Island;
 - the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters; and
 - the best economic interests of the Island.

4 - OVERSIGHT OF MONEY SERVICES BUSINESS

CONSIDERATION OF OPTIONS

4.1 This section considers one option that involves no change and four options in which the Island's existing legislative framework for money services business might be amended to ensure that Jersey complies fully with international standards to combat money laundering and the financing of terrorist activities. In addition, it presents the case for relying on existing legislative provisions. For each "option", it considers advantages and disadvantages. **Please indicate your preference, setting out reasons for the option that you have selected. If your preference is for options 3 or 4, state whether or not the Commission, Customs and Excise, or a new anti-money laundering agency should have responsibility for supervision. If your preference is for option 5, please provide an appropriate threshold for turnover over which the full provisions of the Financial Services Law should apply.**

OPTION 1

- 4.2 The first option is to rely on present legislation, where money services businesses are subject to the Money Laundering Order and other statutory obligations, but with no supervisory oversight.
- 4.3 Since there is little evidence in Jersey to suggest that services provided by money services businesses are subject to abuse by money launderers, this option would allow resources to continue to be directed to those activities which are considered more vulnerable. This option ignores, however, widespread international evidence that money launderers have identified and taken advantage of weaknesses in money services businesses. Given that the Island would continue to be at variance with international standards in this respect, there is also an added danger that Jersey might attract criminal business driven away from other jurisdictions, e.g. the United Kingdom.

OPTION 2

- 4.4 The second option is to require money services businesses to implement a system of self regulation. To operate, money services businesses would be expected to become members of a recognised association (supplying details of their business on application for membership), which would oversee compliance by its members with the Money Laundering Order, and bar from membership those found not to be following the Order. It is likely that this option would involve payment of a membership (and perhaps annual) fee.

4 - OVERSIGHT OF MONEY SERVICES BUSINESS - CONTINUED

4.5 No legislation would be required to establish self regulation, but as there is no industry association which covers the whole of the money services sector in Jersey, it would be necessary to establish an infrastructure. The cost of developing such an infrastructure would not be insignificant. In addition, without there being a legal requirement to do so, it is doubtful that all businesses would wish to join such an association, and self regulation itself would likely not provide sufficiently strong sanctions to enforce compliance with the requirements of the Money Laundering Order. Were this option to be adopted, it is likely that the Island would continue to be considered at variance with international standards.

OPTION 3

4.6 The third option is to require all money services businesses to register² with an anti-money laundering agency (agency), e.g. the Commission or Customs and Excise, and to include with registration, details of their business³. This is in line with the approach followed in the EU, including the UK, and in the Isle of Man. Under this option:

- It would become an offence to undertake money services business without registration.
- An agency would be given powers to enter premises and inspect documents and records to ensure compliance with obligations established in the Money Laundering Order. The frequency of such compliance visits would be determined by a risk-based approach.
- A fee would be paid on registration (and perhaps annually thereafter), although such a fee would be modest.

4.7 This option would involve an amendment to the Proceeds of Crime (Jersey) Law 1999 (Proceeds of Crime Law). Instances of non-compliance would be referred to the Attorney General for consideration to be given to criminal prosecution.

4.8 Such an approach would ensure that such businesses have systems in place to detect money launderers who do use them, and that they report their suspicions. In addition, it is likely that the costs involved in designating an existing body to act as a registry and to monitor compliance with the Money Laundering Order would be lower than those involved in establishing a self regulatory organisation. However, this option would not prohibit criminals from holding or controlling a significant investment in a money services business. Nor would it allow the agency concerned to take its own action against any deficient money services businesses.

2. Registration means a requirement to register with or declare to a designated competent authority the existence of a service in order for the business to operate legally.

3. As a minimum this might be expected to include the name of the business and the address of each of its places of money services business activity, the type of money services business operated by the applicant, the names and addresses of directors, senior officers, and others who control the business, the name and address of the money laundering reporting officer, the name and address of each financial services business with which the money services business has an account, and a statement of whether any of the directors has previously been convicted of a money laundering offence.

4 - OVERSIGHT OF MONEY SERVICES BUSINESS - CONTINUED

4.9 This option has the further disadvantage in that it could require the creation of a new and different set of powers for the Commission. Since the powers would be established under the Proceeds of Crime Law, rather than any of the existing regulatory laws, they would be different in scope and purpose from existing powers. Money services businesses that operated as a stand alone business, therefore, would be subject to a different regime from those that were part of regulated financial institutions.

OPTION 4

4.10 The fourth option is very similar to the third, and would require the registration by all money services businesses of information with the Commission or some other agency (in line with the information requirements summarised under option 3), rather than registration of the business itself as would be required by option 3. This option would also involve an amendment to the Proceeds of Crime Law, and is in line the approach taken in Guernsey. It is likely that this option would also involve payment of a registration (and perhaps annual) fee, though such a fee could be waived for certain businesses.

4.11 The advantages and disadvantages of this option are identical to those of the previous option.

OPTION 5

4.12 The fifth option is to extend the scope of the Financial Services Law to include money services business, by way of Regulations under Article 4(2). This does not involve an amendment to primary legislation.

4.13 For those businesses with turnover⁴ exceeding a prescribed amount, it would become an offence to provide money services business without seeking the authorisation of the Commission, and it would be necessary for the Commission to determine that the business and its owners and controllers were “fit and proper” – and, in particular, would put the Commission in the position to prevent control or ownership of these entities by those who were or were subsequently found to be engaged in financial crime. Those with turnover below the threshold would not be required to apply to be licensed and would be required only to provide an annual declaration of turnover to the Commission. It is expected that only a limited number of businesses would be required to be authorised by the Commission. Indeed, it is the Commission’s intention to set the minimum threshold so as to ensure that this is so.

4. “Turnover” would be defined as the cumulative total of currency bought or sold (measured in sterling using rates prevailing on transaction dates) for money exchange activities/business, the cumulative total of funds transmitted (measured in sterling using rates prevailing on transaction dates) for money transmission activities/business, and the cumulative total cashed (measured in sterling using rates prevailing on transaction dates) for cheque cashing activities/business.

4 - OVERSIGHT OF MONEY SERVICES BUSINESS - CONTINUED

- 4.14 Those businesses with turnover exceeding a prescribed amount would be subject to the Financial Services Law in its entirety⁵. This would include a requirement to adhere to Codes of Practice. While based on those in place for other businesses, the Codes of Practice would be written in terms appropriate for money services businesses and would require basic corporate governance arrangements and requirements to ensure proper compliance with the Money Laundering Order. An indication of what those Codes might cover is set out in the Appendix.
- 4.15 Those with turnover below this threshold would not be expected to comply with any Codes of Practice, and would not be subject to all of the provisions of the Financial Services Law⁶. For them– i.e. all but the largest handful of businesses - the arrangements would be, in effect, identical to those described in options 3 and 4 above, except that the Commission would have the ability to remove from ownership anyone who was engaged in criminal activity, as required by FATF standards.
- 4.16 Under this option, irrespective of turnover, the Commission would have a general power to require provision of information and documents and would be able to exercise regulatory sanctions available to it under the Financial Services Law⁷. Its ability to require provision of information and documents would not be restricted to considering information and documents necessary to assess compliance with the Money Laundering Order. In practice, the Commission would only exercise these powers in respect of specific complaints that related to money laundering, or any other matter which casts doubt on the fitness of the principal persons to undertake money services business.

5. *Amongst other provisions, the Financial Services Law requires notification of changes in ownership and management, and allows the Commission to object to such changes and to place restrictions on ownership of shares. It allows the Commission to issue directions, to make public statements, and to require provision of information and documents. It provides a committee of the States with a power to make Orders relating to accounts and auditors, and to facilitate communication by auditors, accountants and others with the Commission. The full text of the Financial Services Law may be viewed on <http://www.jerseylegalinfo.je/Law/LawsInForce/by/Alpha/f/default.asp?URL=32-1998.htm>.*

6. *The following articles of the Financial Services Law would apply: Article 10A (appointment of manager), Article 20 (power to issue directions), Article 21 (injunctions and remedial orders), Article 22 (public statements), Article 23 (powers of intervention), Article 25 (false information and failure to supply information), Article 29 (general power to require provision of information and documents), Article 30 (investigations on behalf of the Commission), Article 31 (entry and search of premises), Article 32 (obstruction of investigations), Article 33 (co-operation with relevant supervisory authority), Article 34 (restricted information), Article 35 (permitted disclosures), Article 36 (information supplied to Commission by relevant overseas authority) and Article 38 (legal proceedings).*

7. *Article 10A (appointment of manager), Article 20 (power to issue directions), Article 21 (injunctions and remedial orders), Article 22 (public statements), and Article 23 (powers of intervention).*

4 - OVERSIGHT OF MONEY SERVICES BUSINESS - CONTINUED

- 4.17 For those businesses with turnover exceeding a prescribed threshold, an authorisation and annual fee would be set to reflect the cost of regulating this sector. It is not intended to levy a fee on those businesses with turnover below such a threshold.
- 4.18 The advantages of this option are that it fully meets international standards– including the requirement that measures be taken to stop criminals from controlling money services business – something that none of the other options achieve. It does so in a way that, for the majority of money services businesses, involves requirements that are no more burdensome than those set out for options 3 and 4 and will not involve a fee. For those whose turnover exceeds the threshold, there will be a fee and more specific requirements in the form of Codes of Practice.
- 4.19 The disadvantage is that it involves a greater burden on the handful of larger businesses than would the other options. **Suggestions as to the kinds of requirements that might be included in the Codes of Practice are included within this paper in the Appendix and comments on them are requested.**

EXEMPTIONS

- 4.20 It is not intended to apply any additional registration or licensing requirements to persons already subject to one of the Commission's four regulatory laws⁸. It intended that such businesses would be required to do no more than to declare to the Commission the existence of a money services business activity.

FUTURE CHANGES

- 4.21 The proposed definition of money services business follows terminology used in the Money Laundering Order and that already in use in the UK. Consideration is to be given to extending this definition, at some future point, to also include money broking, and the provision of electronic money (the latter activity is regulated throughout the EU). **Do you agree that, in time, the definition of money services business should be extended, and, if so, what activities should be covered?**
- 4.22 The Commission anticipates that a future amendment to the Proceeds of Crime Law will extend the scope of the Money Laundering Order to countering the financing of terrorism.
- 4.23 Consideration has been given by the Commission to whether or not the Money Laundering Order should require money services businesses to identify customers where a one-off transaction or series of transactions are under the £10,000 threshold established by the Order. This is because the threshold is felt by some to be too high for bureaux de change activities. **Do you agree that the threshold for one-off transactions is too high for money services activities, and, if so, what should an appropriate threshold be?**

8. *The Collective Investment Funds (Jersey) Law 1988, as amended, the Banking Business (Jersey) Law 1991, as amended, the Insurance Business (Jersey) Law 1996, as amended, and the Financial Services Law (Jersey) Law 1998, as amended.*

5 – SUMMARY OF QUESTIONS AND COMMENTS SOUGHT

REFERENCE	QUESTION
3.15	The Commission is not aware of any alternative remittance systems operating in Jersey. Respondents are requested to provide any information that they might have to the contrary.
4.1	Please indicate your preference for options 1 to 5, setting out reasons for the option that you have selected.
4.1	If your preference is for options 3 or 4, state whether or not the Commission, Customs and Excise, or a new anti-money laundering agency should have responsibility for supervision.
4.1	If your preference is for option 5, provide an appropriate threshold for turnover over which the full provisions of the Financial Services Law should apply.
4.19	Suggestions as to the kinds of requirements that might be included in the Codes of Practice are included within this paper in the Appendix and comments on them are requested.
4.21	Do you agree that, in time, the definition of money services business should be extended, and, if so, what activities should be covered?
4.23	Do you agree that the £10,000 threshold for identification requirements for those entering into one-off transactions set in the Money Laundering Order is too high for money services businesses, and, if so, what should an appropriate threshold be?

6 - APPENDIX

DRAFT CODES OF PRACTICE FOR MONEY SERVICES BUSINESS

6 - APPENDIX - CONTINUED

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INTRODUCTION

The Codes of Practice (“the Codes”) are issued by the Jersey Financial Services Commission (“the Commission”) under the powers given to it by Article 17 of the Financial Services (Jersey) Law 1998 (“the Law”). The Codes have been prepared and issued for the purpose of establishing sound principles for the conduct of money services business. Consequently, it is intended that the principles in the Codes should apply only to money services businesses that are registered under Article 7 of the Law (“registered person”) (and not to those that are not required to register), and extend only to money services business activities conducted.

It is the responsibility of a registered person to implement such additional practices as it considers necessary. In exceptional circumstances, where strict adherence to the Codes would produce an anomalous result, a registered person may apply to the Commission for variance from the Codes.

Where the Commission has reason to believe that there has been a failure on the part of a registered person to follow these Codes at any time, it would consider making use of its regulatory powers, perhaps through the use of compliance visits or appointment of reporting accountants.

As the Codes establish sound principles for the conduct of money services business, the Commission gives notice that it will regard a breach of the Codes, without reasonable cause, as an indication that a registered person does not satisfy the fit and proper requirements under Article 8 of the Law. The Commission will take appropriate action in respect of such regulatory breaches, including where proper, the revocation of registration under Article 8, the issue of a condition on registration under Article 9, or a written direction under Article 20 of the Law. Following a regulatory breach the Commission, where appropriate, will issue a public statement concerning the registered person under Article 22 of the Law.

Failure to follow these Codes shall not of itself render any person liable to proceedings of any kind or invalidate any transaction, but the Codes shall be admissible in evidence in any proceedings if it appears to the court to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question. The Codes can be revised after consultation with such persons or bodies as appear to be representative of the interests concerned.

Richard Pratt
Director General

2003

6 - APPENDIX - CONTINUED

1. A registered person must conduct its money services business with integrity.

- 1.1. Failure to comply with the above principle will be considered amongst the most serious of breaches of the Codes.

2. A registered person must have the highest regard for the interests of its customers.

- 2.1. A registered person must act with due skill, care and diligence to fulfil the responsibilities undertaken. This requires prompt and accurate execution of customer instructions and appropriate arrangements for protecting confidentiality.
- 2.2. A registered person should either avoid any conflict of interest arising or where conflicts arise, should address such conflicts by disclosure, internal rules of confidentiality, declining to act, or otherwise as appropriate.

3. A registered person must organise and control its affairs effectively for the proper performance of its money services business activities, and be able to demonstrate the existence of adequate risk management systems.

3.1. Corporate governance

- 3.1.1. For a registered person to operate an effective corporate governance system, the following key elements of corporate governance need to be in place:
 - 3.1.1.1. Adequate span of control appropriate to the nature of its business to ensure that it is run in the best interests of customers and so as to secure compliance with the Law, any Orders made under it, and these Codes.
 - 3.1.1.2. The adoption of clearly defined procedures to address risks.

3.2. Internal control systems

- 3.2.1. A registered person must ensure that its systems provide reasonable assurance that:
 - 3.2.1.1. the business is planned and conducted prudently, cost effectively and in an orderly manner in accordance with local and any group management policies;
 - 3.2.1.2. transactions and commitments are entered into in accordance with management's general or specific authority;
 - 3.2.1.3. the accounting and other records of the registered person are complete, accurate and timely and can be used to compile management information and returns; and

6 - APPENDIX - CONTINUED

3.2.1.4. management is able to monitor the adequacy of capital in relation to risk profile, profitability and the quality of its assets.

3.3. Procedures to counter money laundering and terrorist financing

3.3.1. A registered person must comply with the Proceeds of Crime (Jersey) Law 1999, the Terrorism (Jersey) Law 2002, the Drug Trafficking Offences (Jersey) Law 1988, the Money Laundering (Jersey) Order 1999 and follow the standards set out in the Anti-Money Laundering Guidance Notes for the Finance Sector issued by the Commission.

3.4. Compliance officer

3.4.1. A registered person must appoint a compliance officer.

3.4.2. The compliance officer must:

- 3.4.2.1. have appropriate independence and status to ensure that senior management reacts to and acts upon his or her recommendations;
- 3.4.2.2. have unfettered access to all business lines and support departments;
- 3.4.2.3. have sufficient resources; and
- 3.4.2.4. hold either an appropriate (as determined by the registered person) compliance or other professional qualification or be studying towards such a qualification, and have relevant experience to understand and evaluate the business reviewed.

3.4.3. The compliance officer is responsible for:

- 3.4.3.1. ensuring the registered person has robust arrangements, including policies and procedures for compliance with all relevant Laws, Orders and Codes of Practice, including anti-money laundering requirements;
- 3.4.3.2. ensuring appropriate monitoring of operational performance and promptly instigating action to remedy any deficiencies in the robust arrangements;
- 3.4.3.3. maintaining a register of breaches of regulatory requirements; and
- 3.4.3.4. providing the principal point of contact on regulatory matters for employees and the Commission.

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- 3.4.4. The Commission must be informed of any proposed change of designated compliance officer, and a Personal Questionnaire forwarded to the Commission accordingly.

Note 1: Where a registered person has an inexperienced compliance resource, the Commission would expect the registered person to support this area of operation where necessary by importing specialist skills, possibly through the use of group resources.

Note 2: Where the activities or scale of regulated operations are limited, then the Commission will consider, on application by the registered person, exemption from the requirement to hold either an appropriate compliance or other professional qualification or be studying towards such a qualification.

3.5. Record-keeping

- 3.5.1. A registered person must:

- 3.5.1.1. keep adequate and orderly records, not only of business transacted, but also of its internal organisation and its risk management systems, where appropriate;
- 3.5.1.2. maintain such books and records at an appropriate location in the Bailiwick, and if kept otherwise than in legible form, so as to be readable at a terminal in the Bailiwick and produced in legible form without any delay;
- 3.5.1.3. keep its records for at least 5 years; and
- 3.5.1.4. have a clearly documented policy regarding record retention.

Note 1: The law is silent as to the form which records should take and the Commission expects that registered persons will use available technology to retain and facilitate access to these records. In the case of doubt, legal advice should be taken as to the types of records required for admissibility in a court of law.

Note 2: In special circumstances or where compliance is otherwise clearly impractical, the Commission reserves the right to waive the requirement for registered persons to maintain books and records at an appropriate location in the Bailiwick.

3.6. Complaints

A registered person must establish an effective complaints handling system and procedure.

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3.7. Integrity and competence

Integrity

- 3.7.1. A registered person must ensure that its directors, senior managers and all other employees are fit and proper for their roles. "Employees" includes not only direct employees, but also indirect employees such as temporary and contracted employees and other contracted service providers, and in the case of a sole trader, the proprietor of the business.

Competence

- 3.7.2. Without limiting paragraph 3.7.1, directors and senior managers will be expected to be able to demonstrate proper competence.
- 3.7.3. It is a matter for the registered person to determine the appropriate levels of qualifications and experience applicable to the various categories of its employees.

4. A registered person must be transparent in its money services business arrangements.

- 4.1. A registered person must inform its customers that it is regulated by the Commission in the carrying on of money services business.
- 4.2. A registered person must communicate information to customers in a way that is adequate, fair and not misleading. A registered person must also provide confirmation, in legible form, of any transaction effected for the customer.
- 4.3. A registered person shall be open and transparent about its charges - effectively a "no surprises" policy. Publication of scales of charges, which are available on request, could assist in this regard.
- 4.4. A registered person must ensure that its advertising and promotional literature is clear, fair, reasonable and is not deceptive or misleading.

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- 5. A registered person is expected to deal with the Commission, and other authorities in the Bailiwick, in an open and co-operative manner.**
- 5.1. There is a need for candour and co-operation in a registered person's relationship with the Commission. A registered person is required to advise the Commission promptly of any matter that might reasonably be expected to affect its registration or be in the interests of its customers to disclose. This principle extends to the provision of information and notification of events concerning non-regulated activities and other members of the corporate group, where appropriate (for example, in relation to money laundering issues).
- 5.2. When a registered person has failed to comply with other parts of the Codes, its observance or non-observance of this principle will be relevant to the question of mitigation or aggravation.