Overview of changes proposed to Jersey’s AML/CFT framework

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Agenda

› Jersey Financial Crime Strategy Group
› 2012 FATF Recommendations
› Proposed changes to Jersey’s AML/CFT framework
  › Consultation Paper
› Proposed Registry Law
Jersey Financial Crime Strategy Group

› Responsible for co-ordinating the actions of the island to mitigate the risk of financial crime.
› Co-ordination of risk assessments
› Review and development of financial crime policies and legislation
› Appropriate risk-based application of resources
2012 FATF Recommendations

› Replaced 2003 Recommendations
› Strengthen areas of higher risk
› Deal with new threats
› Clearer on transparency
› Tougher on corruption
› Formal integration of the risk-based approach
Proposed changes to AML/CFT framework

› Changes to legal framework:
  › AML/CFT policies and coordination
  › ML and confiscation
  › TF and financing of proliferation (FP)
  › Preventive measures
  › Powers and responsibilities of authorities
  › Transparency of legal persons/arrangements
Proposed changes to AML/CFT framework

- AML policies and coordination
  - R.1 (NRA)
    - FIs and DNFBPs required to consider outcome of NRA when performing risk assessments
Proposed changes to AML/CFT framework

› ML and confiscation
  › R.4 (confiscation and provisional measures)
    › Possibility of confiscating “gifts” made within a period of 5 years (clawback period) before criminal offending
      › Includes property settled into discretionary trust
Proposed changes to AML/CFT framework

› TF and FP
  › R.8 (NPOs)
    › Additional obligations on NPOs that may be “vulnerable to TF abuse”
    › Supervision for compliance with obligations
    › Potential range of obligations
Proposed changes to AML/CFT framework

› Preventive measures
  › R.10 (CDD)
    › Where customer is an individual:
      › Verify that any person acting on behalf of customer is authorised to do so; and
      › Find out and verify identity of that party
    › Mitigate risks where verification of identity delayed
Proposed changes to AML/CFT framework

› Preventive measures
  › R.10 (CDD)
    › Simplified CDD measures to be replaced with statutory exemptions
      › Removal of requirement to find out identity of significant third parties
      › However, exemptions subject to NRA findings
  › No CDD requirement if “tipping-off” concern
Proposed changes to AML/CFT framework

› Preventive measures
  › R.11 (record-keeping)
    › Records to be made available “swiftly” to domestic authorities, rather than “on a timely basis”
    › Records to include results of analysis (e.g. inquiries to establish the background and purpose of complex, unusual large transactions)
Proposed changes to AML/CFT framework

› Preventive measures
  › R.12 (PEPs)
    › Foreign PEPs
      › Mandatory enhanced monitoring
  › Higher risk domestic PEPs
    › Enhanced measures
    › Guidance on “higher risk”?
Proposed changes to AML/CFT framework

› Preventive measures

› R.13 (correspondent banking)
  › Extension of enhanced CDD to “similar relationships”, e.g. securities transactions or funds transfers

› R.15 (new technology)
  › Timing of risk assessment to be clarified - prior to launch or use of products, practice and technology
  › Measures to manage and mitigate risks
Proposed changes to AML/CFT framework

› Preventive measures
  › R.17 (reliance)
    › Additional condition to be met where reliance is placed on group third party: any higher country risk is adequately mitigated by group’s AML/CFT policies
  › R.18 (internal controls and foreign branches and subsidiaries)
    › Information sharing at group level
Proposed changes to AML/CFT framework

› Preventive measures
  › R.22 (DNFBPs)
    › Estate agents to apply CDD measures to both parties to any real estate transaction in which they are involved
Proposed changes to AML/CFT framework

› Powers and responsibilities of authorities
  › R.26 (regulation and supervision of FIs)
    › AML/CFT supervisors to be required to apply a risk-based approach
Proposed changes to AML/CFT framework

- Powers and responsibilities of authorities
  - R.28 (regulation and supervision of DNFBPs)
    - Measures to prevent criminals or their associates being professionally accredited, or holding significant or controlling interest, or holding a management function
  - AML/CFT supervisors to be required to apply a risk-based approach
Proposed changes to AML/CFT framework

› Transparency of legal persons
  › R.24
    › All “basic” information should be publicly available, including:
      › List of directors (or equivalent)
      › “Basic regulating powers” for foundations
    › Changes to “basic” information to be disclosed to Companies Registry within 21 days
Proposed changes to AML/CFT framework

- Transparency of legal persons
  - R.24
    - Legal persons to nominate: (i) natural person; or (ii) TCB supervised by JFSC (nominated person), to provide “basic” and beneficial ownership information to authorities.
    - Name of nominated person to be held by registrar
    - Intermediate and ultimate beneficial owners to cooperate with legal person and/or nominated person
Proposed changes to AML/CFT framework

- Transparency of legal persons
  - R.24
    - Directors (and equivalent)/liquidator, and nominated person to maintain “basic” and beneficial ownership information for five years post dissolution
    - Comptroller of Taxes to have timely access to beneficial ownership data
    - Express prohibition on bearer shares/warrants
Proposed changes to AML/CFT framework

- Transparency of legal persons
  - R.24
    - Use of nominee shareholders
      - Option A – permit only TCBs supervised by JFSC; or
      - Option B - permit nominees licensed and supervised in Jersey and any equivalent jurisdiction; or
      - Option C - permit any person so long as identity of nominator recorded by: (i) company; and (ii) Registrar
Proposed changes to AML/CFT framework

- Transparency of legal persons
  - R.24
    - Express prohibition of “nominee” directors
Proposed changes to AML/CFT framework

- Transparency of legal arrangements
  - R.25
    - Trusts Law or AML/CFT legislation
      - Trustee to hold information on agents and service providers, e.g. investment advisor, manager, accountant, tax advisor etc.
      - Trustee to disclose fiduciary status to FIs and DNFBPs
      - “Gateway” to allow trustee to provide confidential information to FIs and DNFBPs
Proposed changes to AML/CFT framework

› Transparency of legal arrangements

› R.25

› Provisions extend to any express trust governed under Jersey law

› Including non-resident trustees of Jersey trusts where no Jersey property or income
Proposed changes to AML/CFT framework

Consultation

Published 27 July 2018

Closes end September 2018
Registry Law

Tom Fothergill
Government Lead
Registery Law (1/2)

- Register of Entities (Jersey) Law 201-
  - Bring together registration obligations for entities and LPs in one statute
  - Clarify the powers of the registrar, including enforcement
  - Provide a foundation for using innovative technology
  - Replace COBO for the majority of companies
Matters arising out of the Registry Law

- Register of legal owners (public)
- Register of beneficial owners (private)
- Register of directors, officers and secretaries (public)
- Register of disqualifications (public)
- Signatures, authorisations and digital communications
NRA update

Andrew Le Brun - NRA Lead
Sally O’Connell - Barclays
Robert Surcouf - JTC
Overview

› Higher risk areas
› Private sector perspective
Housekeeping

› Team leader change
  › National ML vulnerability
    › Jamie Biddle

› Updated timeline
  › First draft to World Bank – March 2019
Data collection (1/9)

› JFSC Phase I

› Good response rate - 98%

› First time exercise undertaken on this scale

› Some data quality issues - to be addressed through updates to guidance and data collection forms

› Sector reporting aggregated - limited cleansing
Data collection (2/9)

› JFSC Phase II
  › Step 1 – 30 September
  › Step 2 – 31 October
  › Step 3 – 16 November

› JFSC 2018 data
  › Q1 2019 – details to follow
Data collection (3/9)

› Government survey of private sector

› Timeline
  › Week commencing 24 September to 31 October
  › Overlap with JFSC Phase II data collection

› Link to be publicised by trade bodies and associations, Jersey Finance and JFSC

› Voluntary and anonymous participation
Government survey of private sector

Completion

Many “closed” responses, e.g.
- Yes/no/not sure
- Never/rarely/quite often/very often/always
- Select options/bands
- Not at all (0) to very well (10)
- “No experience”
Data collection (5/9)

› Government survey of private sector

› Completion (cont’d)

› Time to complete?

› Questions to Island ARK and Chief Executive's Office - Government
Data collection (6/9)

› Government survey of private sector
  › Sections
    › About your organisation
    › Preventive measures – organisation and industry
      › Integrity
      › Knowledge and training
      › Compliance culture and effectiveness
    › Reporting
    › Customer due diligence
Data collection (7/9)

› Government survey of private sector
  › Sections
    › Supervision and enforcement of AML/CFT requirements by JFSC
    › Enforcement of AML/CFT requirements by law enforcement agencies
    › ML/TF threats and vulnerabilities – organisation and Island
Data collection (8/9)

› Government survey of private sector
  › Use of data
    › NRA teams – report and action plan
      › Reliant upon good evidence
    › Smarter regulation and supervision
Data collection (9/9)

› Other Government surveys
  › Consulting firms and law firms
  › Foreign competent authorities
    › JFCU-FIU
    › JFCU-Operations
    › Law Officers’ Department
    › JFSC
Higher risk areas (1/2)

› National ML vulnerability team
  › Legal persons and legal arrangements
  › Registers – aircraft and shipping
  › Emerging areas
    › Crypto currencies
    › Crowd-funding
Higher risk areas (2/2)

› Securities ML vulnerability
  › Non-regulated issuers
› TCSP ML vulnerability
  › Family offices
› Other vulnerabilities
  › Immovable property
  › Gambling