



Schedule 2 business: Directors

Introduction

These frequently asked questions have been collated to respond to queries from Industry. They may be updated from time to time.

Glossary

Terms used in this document:

AML/CFT/CPF	Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing.
Directors	Directors shall also mean partners of a partnership and members of the council of a foundation.
Schedule 2	Schedule 2 to the Proceeds of Crime (Jersey) Law 1999

1. Why has Schedule 2 been amended?

Jersey has a long-standing commitment to comply with the international standards against money laundering and terrorist financing developed by the Financial Action Task Force (FATF).

An assessment of Jersey's adherence against those standards was conducted by Moneyval in 2015. Following that assessment, it was determined that Schedule 2 should be recast so that all activities and operations subject to AML/CFT obligations mirror the definitions within the FATF Recommendations.

2. How do I know if I am in scope?

There is a three-part test for determining whether you are in scope. All three parts must be met for you to be in scope.

a) You are acting as or arranging for another person to act as a director or equivalent

You must consider whether you are:

- › Acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, director or alternate director of a company; and/or
- › Acting as, or fulfilling the function of, or arranging for another person to act as, or fulfil the function of a partner of a partnership; and/or
- › Acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a member of the council of a foundation.

b) You are conducting those services as a business

If you have determined that you meet one of the criteria set out in sub section a) above, you must then consider whether you are doing so 'as a business'.

There is no single test for determining whether you are conducting a service 'as a business'. This can be subjective and indicators may include:

- › Where you advertise or promote the provision of your director services
- › Where you receive business referrals for the purposes of providing your director services
- › Where you receive financial compensation, in any form
- › Where you intend to make a commercial gain in any form

The test for determining whether you require a business licence in accordance with the Control of Housing and Work (Jersey) Law 2012 is not applicable to determining whether you are providing director services ‘as a business’ for these purposes.

c) You are providing those director services to third parties

Having determined that you meet the criteria in sub sections a) and b) above, you must then consider whether you are providing those services to third parties. If the services are not being provided to third parties, you are not in scope and will not need to register with the JFSC.

In its simplest form, a third party in this sense, is akin to a customer or client. That is, you are providing services to someone other than yourself (noting that you must be doing so ‘as a business’).

If, having considered the above, you determine that you are conducting director services as a business for third parties, you will be required to register with the JFSC and will become a supervised person, subject to the provisions of Jersey’s anti-money laundering, counter terrorist financing and counter proliferation financing regime. Further details on what this means and how these duties can be discharged are set out below at question 19.

3. Is remuneration, or the value of remuneration received, the key/sole factor in determining whether the provision of acting as Director is being conducted as a business?

No.

Remuneration/financial compensation is an indicator but is not the sole factor for determining whether you are providing director services ‘as a business’.

4. In the following scenarios am I now in scope?

- › I am a Jersey resident who is the director of a Jersey company that I wholly own. I have no other directorships.
No. A person who is only a director solely by virtue of their employment is not doing so ‘as a business’.
- › I am an employee of a trust company. In the course of my employment, I have been appointed as a director on a client entity. I have no other directorships.
No. A person who is a director of a company they wholly own is not providing director services ‘to third parties’ in respect of that directorship.
- › I am an individual executor acting in a personal capacity.
No. An executor acting in a personal capacity is not carrying out the activity ‘as a business’.

5. In the following scenarios am I now in scope?

- › I am a director of a business that is not a financial services business.
- › I am a Jersey resident who is the director of a Jersey company that is wholly owned by Jersey resident friends and family.
- › I am not a Jersey resident but am a director of a Jersey company that is owned by Jersey resident friends and family.
- › I am a director of a Jersey company that I am part owner of alongside other family members.
- › I am a Jersey resident who is the director of a Jersey company that is managed by a registered financial services provider that is regulated by the JFSC.
- › I am not a Jersey resident but am a director of a Jersey company that is managed by a registered financial services provider that is regulated by the JFSC.

The type of company and/or activities of the company you are a director of is not relevant in determining whether you are now in scope. Further, being a non-Jersey resident or domiciled director does not automatically preclude an individual from being within scope. It is the business of providing director services that is caught.

You must consider whether, by acting as a director, you are providing those director services 'as a business to third parties'.

6. I am a director but have chosen to waive my director fees. Am I now in scope?

Financial compensation, including benefits in kind and similar, is one indicator but is not the sole factor in determining whether you provide director services.

You must consider whether you, by acting as a director, are providing those director services 'as a business to third parties'.

7. I am the director of a charity. Am I in scope/do I need to register?

A director of a charity who holds the role in an honorary, recreational or charitable capacity, receiving no compensation for the role will not be in scope and does not need to register.

8. I am only a director by virtue of my employment. Am I now in scope?

No.

Where, during the course of your employment you have been appointed as a director, you are not doing so 'as a business'. You receive a salary by virtue of being employed but do not receive remuneration specifically or solely in relation to your role as a director.

Examples would include:

- › Jersey individual employed by a Jersey trust/fund services company who is appointed to a company within a client structure.
- › Jersey individual employed by a non-financial services business who is appointed director to that non-financial services business.
- › UK resident, employed by UK company who is appointed director to a Jersey company within the same ownership structure.
- › Swiss resident, employed by a family office as their legal adviser who is appointed director to the family legal entities in Jersey.

9. I am a director by virtue of my employment but am also an independent director for companies not related to my employment. Do I need to register?

See above regarding directorships by virtue of employment. Where however you are acting as a director for companies outside of your employment and are doing so as a business for third parties, you will be required to register.

10. I am the sole director of a Jersey company but have a contract for services/a zero-hour contract by the company. I am not the owner of the company. As I am an executive director, am I out of scope?

No.

You have not been appointed director of the company by virtue of your employment by that company. Here your 'employment' is for the purpose of providing your director services and as such, you are likely to be doing so 'as a business'.

11. Can I continue to take advantage of the exemption around the de minimus director positions?

No.

The de minimus exemption that previously provided a director of not more than six companies be exempt from AML/CFT registration has been removed. This is in line with international standards concerning AML/CFT. The de minimus exemption under the Financial Services (Jersey) Law 1998 in respect of registering for Class G business under a trust company business licence remains in place.

12. I currently have no directorships but am actively looking for positions. Do I need to register?

You will need to ensure your registration is completed prior to any appointment taking effect if you take on providing directorships as a business to third parties.

13. We are a recruitment agency who advertise director roles from time to time. Does this mean we fall within the definition of 'arranging for another person to act as' a director?

No.

Arranging for someone to act in a particular capacity does not include advertising to find suitable candidates for a position that a recruitment agency would carry out.

14. I am a UK resident who provides director services to, amongst other entities, a Jersey company. I am already registered and supervised for the provision of these services in the UK. Do I still need to register with the JFSC.

In this example, you are providing director services as a business to a third party so would be within scope and required to also register in Jersey as the activity is being carried out for a Jersey company and/or in Jersey. Being resident outside of Jersey does not automatically preclude an individual from being within scope. It is the business of providing director services that is caught.

15. I am already registered as a Class G director under the Financial Services (Jersey) Law 1998, what do I need to do?

As a Class G director, you should have received a Notification Workbook which you will need to complete and send back to the JFSC. This should require relatively minor input of information. The scope of liabilities you hold remains unchanged.

If you have not received your workbook, please contact your JFSC Supervisor.

16. I am already registered under Schedule 2 (as an accountant or lawyer in an individual capacity) but also hold director positions for third parties, do I need to register and pay again?

You should have received a Registration Workbook from the JFSC. You will need to tick any additional Schedule 2 activities you are conducting, including acting as a director, in the Workbook. This will serve as a “notification” in line with your statutory requirements. This should require relatively minor input of information.

You will not be required to pay an additional fee.

If you have not received your workbook, please contact your JFSC Supervisor.

17. I am newly in scope, what do I do now?

You will need to register with the JFSC. The application form to register can be found here: [Schedule 2 Forms — Jersey Financial Services Commission \(jerseyfsc.org\)](https://www.jerseyfsc.org/Schedule-2-Forms).

The JFSC will be hosting a series of drop-in sessions throughout May 2023. These informal sessions are being set up for Directors who may wish to seek support with completing the registration process. Further details of the sessions will be published on the JFSC’s website in early May.

18. As an individual director who is now in scope, do I need to appoint a Money Laundering Reporting Officer (MLRO) and/or Money Laundering Compliance Officer (MLCO)?

No.

A sole director can act as MLRO/MLCO.

19. I am now in scope, what are my AML/CFT/CPF obligations and how can I discharge them?

Where you are providing director services ‘as a business to third parties’ you are required to meet the AML/CFT/CPF obligations set out in the Money Laundering (Jersey) Order 2008 (the Money Laundering Order) and the AML/CFT/CPF Handbook (the Handbook). At a high level, as a director, you are required to:

- › Ensure a risk assessment is carried out, identifying where your business is vulnerable to ML/FT/PF. For clarity this relates to your business of providing director services.
- › Ensure written policies and procedures are in place and maintained to show how the business will manage the risks of ML/TF/PF identified in the risk assessment.

- › Ensure policies and procedures are reviewed and updated to reflect changes to the risks faced by your business and that written records of the changes are kept.

Whilst it is for each director to determine how they might discharge these duties, the table at Appendix 1 to this document might be of some assistance in this respect.

Further, the JFSC will be hosting a series of events aimed at discrete groups of directors in the latter part of April 2023 to further explore how these duties might be discharged.

Director appointed to an entity which is a:		
1.	Deposit Taking business (licensed under the Banking Business (Jersey) Law 1991)	<p>Business Risk Assessment (BRA): The JFSC would expect a director to document a business risk appetite statement specific to their own business.</p> <p>The JFSC would expect a director to produce a business risk assessment bespoke to their own services and customers.</p> <p>Customer Risk Assessment (CRA): The JFSC anticipates a director will adopt the BRA of each of the licenced or regulated entities to which they are appointed, provided, they are and continue to satisfy themselves that the Money Laundering Order and Handbook are being adhered to by the entity.</p> <p>Policies and Procedures (P&Ps) (including in relation to SARs): The JFSC anticipates a director will, in the large, adopt the P&Ps of each of the licenced or regulated entities to which they are appointed, provided, they are and continue to satisfy themselves that the Money Laundering Order and Handbook are being adhered to by the entity.</p> <p>The JFSC expects a director to assess those procedures to satisfy themselves that the Handbook and the Money Laundering Order are being adhered to by the entities to which they are appointed.</p> <p>Customer CDD: The JFSC expects a director to have in place a customer acceptance procedure which should include an initial risk assessment of its customer(s) (entity to which they are appointed as director).</p> <p>Monitoring and Effectiveness: The JFSC anticipates this will be met through consideration of the reports, presented to the collective board on compliance matters (see 2.4.1 and 2.4.2 of the Handbook in particular) and financial matters, as produced by each entity. This will be demonstrated through minutes of each entity evidencing discussion/contribution/challenge, as appropriate to those matters by the director.</p>
	Trust Company Business (licensed under the Financial Services (Jersey) Law 1998 (FSJL))	
	Investment Business (licensed under the FSJL)	
	Fund Services Business (licensed under the FSJL)	
	AIF Service Business (licensed under the FSJL)	
	Money Service Business (licensed under the Insurance Business (Jersey) Law 1996)	
	Recognized Fund (licensed under the Collective Investment Funds (Jersey) Law 1988 (CIF))	
	Permit Holder (licensed under the CIF)	
	Certificate Holder (licensed under the CIF)	
	DNFBP (as defined in Schedule 2 to the Proceeds of Crime Law 1999 (Schedule 2))	

	<p>Financial Institution (as defined in Schedule 2)</p> <p>Prescribed Non-Profit Organisation</p> <p>Virtual asset service provider (as defined in Schedule 2)</p>	<p>MLCO/MLRO Appointment: The JFSC does not expect a director to independently appoint an MLRO/MLCO.</p>
2.	<p>A local Jersey entity that does not fall within one of the above categories but applies the AML/CFT/CPF controls of an entity that does fall within one of the above categories because it is part of the same group.</p>	<p>See section 1. Above.</p>
3.	<p>Non-Jersey domiciled financial services business</p>	<p>Provided a director has determined that the entity is based in an equivalent jurisdiction (that applies measures that are at least equivalent to the AML/CFT/CPF measures applied in Jersey), refer section 1. above.</p> <p>If a director cannot determine that the entity is based in an equivalent jurisdiction, see section 4. below.</p>
4.	<p>A Jersey entity that is not regulated or supervised by the Jersey Financial Services Commission.</p>	<p>BRA: The JFSC would expect a director to document a business risk appetite statement specific to their own business. The JFSC would expect a director to produce a business risk assessment bespoke to their own services and customers (a separate BRA information sheet will be published on our website shortly).</p> <p>CRA: The JFSC would expect a director to incorporate a customer risk assessment into its BRA (a separate CRA information sheet will be published on our website shortly).</p> <p>P&Ps (including in relation to SARs): The JFSC anticipates a director will have in place policies and procedures in respect of its business in order to prevent and detect money laundering, the financing of terrorism and proliferation financing (a separate P&P information sheet will be published on our website shortly).</p>

		<p>Customer CDD: The JFSC expects a director to have in place a customer acceptance procedure which should include an initial risk assessment of its customer(s) (entity to which they are appointed a director).</p> <p>Monitoring and Effectiveness: The JFSC would expect a director to receive financial information related to its customer(s) on a periodic basis such that it is able to undertake transaction monitoring.</p> <p>The JFSC anticipates a director will periodically review their BRA, CRA, P&P's and Customer CDD to ensure they are fit for purpose. This will ordinarily be demonstrated through the director updating each document with a version control, latest date.</p> <p>MLCO/MLRO Appointment: The JFSC does not expect a director to independently appoint an MLRO/MLCO.</p>
5.	Non-Jersey domiciled non-financial services business	See section 4. above.