

# **FEEDBACK ON CONSULTATION PAPER NO. 9 2009**

## **MONEY LAUNDERING (AMENDMENT NO.4) (JERSEY) ORDER 200-**

**Amendments to the Money Laundering (Jersey) Order 2008**

ISSUED 14 DECEMBER 2009

# CONSULTATION FEEDBACK

This paper reports on the responses received by the Jersey Financial Services Commission (the **Commission**) on Consultation Paper No. 9 2009: Amendments to the Money Laundering (Jersey) Order 2008.

Further enquiries concerning the consultation may be directed to:

**Andrew Le Brun**

Director - International & Policy Division

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](mailto:a.lebrun@jerseyfsc.org)

# Glossary of terms

|                            |  |
|----------------------------|--|
| Amendment No. 4            | means the draft Money Laundering (Amendment No. 4) (Jersey) Order 200-                               |
| the AML/CFT Steering Group | means the Commission's Steering Group for countering money laundering and the financing of terrorism |
| the Commission             | means the Jersey Financial Services Commission   |
| the CTA                    | means the Counter-Terrorism Act 2008 of the UK   |
| the IMF                    | means the International Monetary Fund  |
| the Minister               | means the Minister for Treasury & Resources  |
| the Money Laundering Order | means the Money Laundering (Jersey) Order 2008   |
| a relevant person          | means a person that is subject to the Money Laundering Order   |
| the UK                     | means the United Kingdom   |

# Contents

|   |           |
|---|-----------|
| Glossary of terms.....  | 3         |
| Contents .....  | 4         |
| <b>1 OVERVIEW .....</b>   | <b>5</b>  |
| 1.1 Background.....   | 5         |
| 1.2 Feedback on the proposals contained in the Consultation Paper ..... | 5         |
| <b>2 SUMMARY OF RESPONSES .....</b>                                     | <b>6</b>  |
| 2.1 Structure of this section.....                                      | 6         |
| 2.2 Article 18 .....  | 6         |
| 2.3 Article 23C.....  | 8         |
| 3.3 Other matters.....  | 8         |
| <b>APPENDIX A .....</b>   | <b>10</b> |
| List of respondents.....  | 10        |

# 1 OVERVIEW

## 1.1 Background

- 1.1.1 The [Money Laundering \(Jersey\) Order 2008](#) (the “**Money Laundering Order**”) came into force in February 2008 and has been amended on three separate occasions since then, most recently in November 2008.
- 1.1.2 The measures that are prescribed in the Money Laundering Order are those that are to be applied to financial institutions and designated non-financial businesses and professions in accordance with the 40 Recommendations and 9 Special Recommendations of the Financial Action Task Force.
- 1.1.3 Following its recent review of Jersey’s framework to counter money laundering and the financing of terrorism, the International Monetary Fund (the “**IMF**”) has said that some provisions in the Money Laundering Order are not as clearly expressed as it would wish.
- 1.1.4 The main purpose of the draft Money Laundering (Amendment No. 4) (Jersey) Order 200- (“**Amendment No. 4**”) is therefore to deal with such comments, and to clarify and revise the application of concessions established by Article 18 of the Money Laundering Order. Amendment No. 4 does not address any of the more substantive points that have been made in the IMF’s final report.
- 1.1.5 The Consultation Paper also considered the possibility of extending the power given in Article 23C of the Money Laundering Order to the Minister for Treasury & Resources (the “**Minister**”) to direct one or more persons to do, or not to do, certain things. It was proposed that this extended power be based on legislation that is already in force in the United Kingdom (the “**UK**”) where the UK Treasury is able to apply comprehensive countermeasures – intended to address (amongst other things) the risk of money laundering and terrorist financing.

## 1.2 Feedback on the proposals contained in the Consultation Paper

- 1.2.1 The Commission received comments from seven businesses. A summary of these comments can be found in section 2 of this Feedback Paper.
- 1.2.2 A list of the respondents is given in Appendix A.
- 1.2.3 The Commission is grateful to respondents for taking the time to consider and comment on the proposed amendments.

## 2 SUMMARY OF RESPONSES

### 2.1 Structure of this section

- 2.1.1 The questions posed in the Consultation Paper and a summary of the responses received to each one are presented below. How the Commission intends to address the matter raised in each response is set out in italicised text.
- 2.1.2 The Consultation Paper can be obtained from the Commission's website or by contacting the Commission directly.

### 2.2 Article 18

#### Question 4.6.5.1

**Do you agree that the money laundering risk that is presented by a Type B scheme is low? Please provide an explanation to support your answer.**

- 2.2.1 Of the six responses received to this question, five disagreed that the money laundering risk presented by a "Type B"<sup>1</sup> scheme is low.
- 2.2.2 Respondent A drew a distinction between "Type A" schemes<sup>2</sup> (where the sponsoring employer tends to be a company that is quoted on a recognised stock exchange) and "Type B" schemes (where the sponsoring employer would be a private arrangement and more closely aligned to a private corporate structure). In view of this, it was said that "Type B" schemes would have a higher money laundering risk.
- 2.2.3 Respondent B also considered that a "Type B" scheme would present a higher risk. This is because the beneficiaries of a "Type B" scheme would usually have control over assets in the scheme, whereas this would not be the case for a "Type A" scheme. This respondent also thought that such schemes might be attractive to sponsoring employers/beneficiaries that did not wish their identities to be known.
- 2.2.4 Respondent C made a similar point to Respondents A and B. They suggested that a scheme that invested contributions of a number of self-employed individuals would present a higher risk than a larger employer making contributions on behalf of its employees.
- 2.2.5 Respondent D thought a person that is subject to the Money Laundering Order (a "**relevant person**") should apply normal customer due diligence measures to a "Type B" scheme - on the basis that sponsoring employees were also beneficiaries of the scheme.
- 2.2.6 Respondent D suggested that the risk rating for a "Type B" scheme should be dependent on the particular risks posed by, say, self-employed individuals' business interests, the jurisdictions of such interests, and the value of such

---

<sup>1</sup> A Scheme that is established to cover self-employed individuals, where a contribution is made directly from the self-employed individual's business.

<sup>2</sup> A scheme that is established for employees of a particular employer.

interests. The implicit suggestion here is that there should be a risk assessment in each case, rather than provision in legislation for “Type B” schemes to be treated as presenting a lower risk.

- 2.2.7 Respondent B (developing the point set out at 2.2.3) thought that, having assessed the risk of a particular “Type B” scheme, where there were a large number of sponsoring employers investing in such a scheme, it may be advisable to provide that a relevant person identify and verify the identity of only those employers (and beneficiaries) who beneficially own or control a specified percentage of the scheme.
- 2.2.8 One respondent – Respondent E – has experience of dealing with “Type-B” schemes. It deals with schemes established under Swiss law, which must be registered with federal or cantonal authorities. Under Swiss law:
- 2.2.8.1 Only members, and not third parties, may contribute to such schemes.
- 2.2.8.2 Payments are limited to a particular percentage of actual taxed salary.
- 2.2.8.3 Only the member and the member’s family may benefit at certain times and for certain amounts.
- 2.2.9 “Type B” schemes are very common in Switzerland, as membership of an occupational pension scheme is compulsory for individuals over the age of 25 earning more than CHF19,350.
- 2.2.10 Respondent E considers that “Type B” schemes present a “very low risk” of money laundering.
- 2.2.11 *No separate provision for “Type B” schemes will be made at this time in Article 18. Instead, the Commission will discuss this point more fully with its Steering Group for countering money laundering and the financing of terrorism (the “AML/CFT Steering Group”) which will meet early in 2010.*

#### **Question 4.6.5.2**

**Do you agree that Article 18(3) should apply to Type B schemes? If so, do you consider that the wording used in Article 18(3) should be revised to explicitly deal with Type B schemes?**

- 2.2.12 Of the four responses received to this question, three said that Article 18(3) should not be revised to deal explicitly with “Type B” schemes.
- 2.2.13 *No separate provision for “Type B” schemes will be made at this time. Instead, the Commission will discuss this point more fully with its AML/CFT Steering Group which will meet early in 2010.*

## 2.3 Article 23C

### Question 4.7.8.1

**If it is possible to amend Article 23C of the Money Laundering Order in line with the CTA, would you support such a change? Please explain why you think such a change should be made or not made, as the case may be.**

2.3.1 Of the four responses received to this question, all but one supported the amendment to Article 23C of the Money Laundering Order to bring it in line with UK legislation.

2.3.2 One respondent suggested that countermeasures should be applied instead through the Terrorism (Jersey) Law 2002.

2.3.3 *The Commission will liaise with the Chief Minister's Department and other agencies in order to support the introduction of new legislation to mirror Schedule 7 of the Counter-Terrorism Act (the "CTA").*

### Question 4.7.8.2

**If it is not possible to amend Article 23C of the Money Laundering Order, would you support the introduction of new legislation to mirror Schedule 7 of the CTA, including a power to apply countermeasures in a case where a particular threat is posed by the development or production of weapons?**

2.3.4 All four respondents to this question supported the introduction of new legislation to mirror Schedule 7 of the CTA.

2.3.3 *The Commission will liaise with the Chief Minister's Department and other agencies in order to support the introduction of new legislation to mirror Schedule 7 of the CTA.*

## 2.4 Other matters

### Question 4.8.1.1

**Do you have any other comments on Amendment No. 4? If so, please set out those comments.**

2.4.1 One respondent noted that the proposed amendments to Article 18 did not consider other forms of employer settled trust arrangements, e.g. share plans and cash deferral plans that are not pension arrangements. They asked whether the scope of Article 18 might be extended beyond pension arrangements.

2.4.2 *In line with the approach that is followed in the European Union, there are no current plans to extend the scope of Article 18 beyond pension schemes. However, the identification measures that must be applied by a trustee in the case of a scheme that is not a pension scheme but is otherwise used to remunerate employees are considered in Consultation Paper No. 10 (2009) on a sector specific section for trust company business.*

2.4.3 Another respondent requested clarification on how the amendment to Article 3 of the Money Laundering Order would affect collective investment funds.

- 2.4.4 *The proposed amendment to Article 3 will not affect the treatment of investors in a collective investment fund. As a relevant person, a fund will continue to be subject to an obligation to identify and verify the identity of each investor by virtue of Article 3(2)(a).*
- 2.4.5 *In a case where a fund is a company issuing units and an applicant for business, then a relevant person must apply Article 3(2)(a) and (c) of the Money Laundering Order to the fund.*
- 2.4.6 *In a case where a fund is a limited partnership or unit trust and an applicant for business, then a relevant person must apply Article 3(2)(a) and (b) of the Money Laundering Order to the fund. A relevant person, e.g. a bank, would be required to treat the general partner and trustee as the customer under Article 3(2)(a) and the limited partnership and trust as a third party under Article 3(2)(b). Article 3(7) retains the application of a risk-based approach, the effect of this being that a relevant person may, on the basis of an assessment of risk, determine which investors in the limited partnership or trust to identify and verify the identity of. [Typically, this will be any investor that holds 25% or more of the shares, units, or interests in the fund.]*
- 2.4.7 *In order to emphasise the application of a risk-based approach, the Law Draftsman will be requested to amend Article 3(7)(b)(i) to read "a beneficial interest" rather than "any beneficial interest".*
- 2.4.8 *The application of customer due diligence measures by funds and to funds will be covered by a proposed sector specific section for funds.*
- 2.4.9 Another respondent noted that the effect of the proposed change to the application of identification measures to listed companies and public authorities would be that, in future, those individuals that are authorised signatories must always be identified and their identity verified.
- 2.4.10 The respondent suggested that it would not be unusual for a listed company to provide an authorised signatory list to a bank that contained numerous authorised persons, each having different signing rights and all able to sign on the bank account. The effect of this would be that a relevant person would be required to spend a considerable amount of time and effort identifying and verifying the identity of authorised persons. As a result, the respondent suggested retaining the current exemption for account signatories, which does not require the identity of such individuals to be established or verified.
- 2.4.11 One other respondent thought that it would be "incongruous" to require identification measures to be applied to each person purporting to act on behalf of a listed company, where such a person was also a controller of the listed company (and covered by a continuing identification exemption).
- 2.4.12 *In order to allow further time to consider these two points, the proposed amendment to Article 18 will be revised so that it will not be necessary to identify and verify the identity of any person purporting to act on behalf of a customer that is a public authority or a listed company. The Money Laundering Order will be amended, however, to require a relevant person to verify the authority of any person purporting so to act.*

# APPENDIX A

## List of respondents

- Deutsche Bank International Limited
- Dominion Corporate Services Limited
- Kedge Capital Fund Management
- Lloyds TSB Offshore Limited
- Ogier
- Royal Bank of Scotland International
- S G Hambros Trust Company (Channel Islands) Limited