

## Jersey MONEYVAL Report Summary

### Introduction

The MONEYVAL report issued today (Tuesday 24 May, 2016) comprehensively sets out the position of the Island against a number, but not all, of the Financial Action Task Force (FATF<sup>1</sup>) 40 Recommendations (2003) and 9 Special Recommendations (2004) (the former FATF Recommendations). Given the level of detail in the report the following is a high-level summary of the key findings.

### Assessment

An assessment team from the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) completed an evaluation of certain aspects of the Island's institutional, legislative and regulatory framework to deter money laundering and the financing of terrorism through financial institutions<sup>2</sup> and Designated Non-Financial Businesses and Professions (DNFBPs)<sup>3</sup>, as well as examining the capacity, the implementation and the effectiveness of the framework. The assessment followed the FATF Methodology and included an on-site visit to Jersey from 19-24 January 2015. During the on-site visit, the assessment team met with representatives from Government, the relevant Island authorities and the private sector – in total the assessors attended approximately 35 meetings and spoke to in excess of 110 individuals.

The previous assessment of the Island was undertaken by the International Monetary Fund in 2008 and Jersey is the last jurisdiction to be assessed by MONEYVAL under its fourth round assessment programme. Whilst the assessment primarily focussed on the Island's technical compliance with the former FATF Recommendations, for example, the adequacy of the legislative and institutional framework, there was significant consideration of the effectiveness of the framework, being how it functions in practice.

### Commendation

In their report the MONEYVAL assessors commend the Island in a number of areas including with respect to its leading position regarding the transparency of beneficial ownership *“Jersey’s combination of a central register of the UBO<sup>4</sup> with a high level of vetting/evaluation not found elsewhere and regulation of TCSPs<sup>5</sup> of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standard of beneficial ownership transparency”*.

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<sup>1</sup> An inter-governmental body established in 1989, to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The recommendations are recognised as the international standard for combating money laundering and the financing of terrorism.

<sup>2</sup> For example, Banks, investment businesses and lenders.

<sup>3</sup> For example, lawyers, accountants and trust and company service providers (trust company business).

<sup>4</sup> Ultimate Beneficial Ownership.

<sup>5</sup> Trust Company Service Providers.

The Island is described “As a well-established international financial centre, with a mature and sophisticated AML/CFT regime...” and with respect to the offence of money laundering the assessors had praise for the authorities in saying “The technical deficiencies are comparatively minor and the evaluators welcome the speed with which the authorities responded to some of the evaluator’s concerns.”

The report recognised that the Jersey Financial Services “Commission has sufficient powers to effectively supervise financial institutions’ compliance with AML/CFT requirements. The staff of the Commission appears to be very professional. Supervision is conducted on a risk-sensitive basis, which enables the Commission to prioritise regulatory work and focus on higher-risk entities and situations.”

### Recommendations

Jersey received an excellent report as overall the Island was rated Compliant or Largely Compliant with 48 out of the 49 former FATF Recommendations. The final rating (Partially Compliant for former Recommendation 9 – “reliance”) resulted from the accumulation of a number of effectiveness concerns relating to the Jersey regime, whereby, in certain circumstances, the private sector may rely on customer due diligence previously undertaken by equivalently regulated third parties (e.g. banks). Notwithstanding this high-level of technical compliance the report highlights a number of areas for further improvement and includes recommended actions which cover both technical and effectiveness matters, with the effectiveness matters dominating.

The Island’s Financial Crime Strategy Group (FCSG) needs to consider, in detail, the areas highlighted for improvement and the actions recommended by the assessors with a view to developing a detailed response, including indicative timescales for amending the AML/CFT regime in Jersey.

It is important to remember that the assessment was conducted against the former FATF Recommendations and these actions need to be taken forward in conjunction with consideration of the Revised FATF Recommendations (published in 2012) and the impact of the EU 4<sup>th</sup> Money Laundering Directive. Jersey has committed, as with all international standards, to adopt the 2012 FATF Recommendations and will be consulting on the impact of the EU 4<sup>th</sup> Money Laundering Directive.

### International standards

Increasingly, the assessment of compliance with international standards focusses on the effectiveness of a jurisdiction’s framework, or how it works in practice. It is no longer sufficient to simply have a technical framework in place – assessors are looking for evidence that the framework is actually deterring money laundering and the financing of terrorism. Additionally, in instances where this activity is discovered, a jurisdiction needs to evidence that it has the appropriate structure and resources to effectively investigate and prosecute such activity, as well as confiscate any proceeds of crime.

### Convictions and prosecutions

The assessors noted that the Island is able to demonstrate some important convictions for money laundering, including third party laundering, successful prosecutions of gatekeepers, and two

significant landmark cases<sup>6</sup> in 2010. These cases involved very large proceeds of corruption and fraud committed overseas which were accompanied by significant confiscation orders and ultimately asset sharing agreements with the jurisdictions from which the funds were extracted. However, the assessors noted that it is important for the enhancement of the anti-money laundering regime that more suspicions of money laundering are investigated and subsequently more cases prosecuted where there is evidence of abuse of complex legal arrangements and structures in Jersey, including when predicate offences<sup>7</sup> are committed off-Island.

It is also the stated view of the assessors that an effectiveness concern remains given the relatively limited amounts of property seized and confiscated, as against the size and characteristics of the financial sector business conducted.

The assessors have made a number of recommendations in this area including: enabling joint trial of a statutory offence, such as money laundering, with a customary law offence, such as fraud; conducting regular reviews of the adequacy of the resources of the financial intelligence unit, including the current rotational practice, as the work of small units staffed with experienced and well-trained staff can be remarkably impacted by such events; providing the financial intelligence unit, through legislation, with discrete responsibilities within the States of Jersey Police (SoJP) structure thereby increasing its status, operational independence and autonomy and powers; and considering the introduction of a non-conviction based confiscation regime to apply in parallel with the current conviction-based confiscation system.

### **Effectiveness of the framework**

The assessors also observed that the effectiveness of the Island's regime could be improved with additional awareness raising within the private sector. In this regard the assessors cited a number of specific areas where they considered raising the awareness of the requirements would be beneficial: generally within the DNFBP sectors, including estate agents; with respect to enhanced due diligence specifically its relationship with high-risk customers; and the control element of beneficial ownership to ensure that the private sector do not solely focus on the material element but also consider ownership by control.

Aligned to awareness raising, the assessors identified a number of areas where they considered the regime could become more effective if additional guidance was provided and highlighted some areas where they considered the Jersey Financial Services Commission (JFSC) should target its supervisory resources to ensure effective implementation of the framework, for example, simplified identification measures applied by some DNFBPs were considered to go beyond the requirements of the FATF Recommendations and the application of available exemptions should be monitored.

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<sup>6</sup> Peter Michel (4 years' imprisonment, disqualified from acting as a company director for six years and confiscation order of £6.5 million) and Raj Anjandas Bhojwani (6 years' imprisonment and confiscation order of £26.5 million).

<sup>7</sup> The underlying criminal activity from which the proceeds of crime are derived. In Jersey this includes all criminal conduct with a punishment of more than one year's imprisonment.

Whilst the framework for co-operation and coordination between the relevant agencies through the FCSG is recognised as strong, the assessors consider that inter-agency cooperation should continue to be enhanced.

Additionally, a comprehensive review of the effectiveness of the Island's framework should be undertaken at appropriate times. Such a comprehensive review will need to consider the threats and vulnerabilities inherent within the Island's financial services sector as well as the current framework designed to mitigate the inherent risks – a National Risk Assessment of Money Laundering and Terrorist Financing, as required by the 2012 FATF Recommendations is due to occur during 2016 and 2017 which will go a long way to addressing this recommendation.

### Technical Framework

Turning to the technical concerns, the following gives an indication of the areas of concern and actions recommended. The Island's usual operational criteria apply and where amendment is proposed to either legislation or the Codes of Practice issued by the JFSC full consultation with the impacted sector will be undertaken before any amendments are implemented.

The assessors consider that the current £300,000 threshold for registration as a Money Service Business is high and recommend that this be reviewed.

The assessors raise concerns regarding a small number of activities that are exempted from the ML framework where the assessors did not consider that the risk of the activity being used for money laundering or financing of terrorism was proven as low. Consequently, it is recommended that the authorities review these activities again and take appropriate action which may include removing one or more of the exemptions in full or in part if the risk is not proven to be low.

Additionally, notwithstanding the requirements regarding customer due diligence, for the avoidance of doubt, the assessors recommend that Jersey Companies Law be amended to expressly prohibit the issuance of bearer shares<sup>8</sup> and consideration be given to utilising the UK Proceeds of Crime Act definitions of property as, in the opinion of the assessors, they contain useful clarifications which may be of value in Jersey.

### Beneficial ownership and due diligence

A concern is highlighted relating to the adequacy of measures to ensure that accurate, complete and current beneficial ownership is available for family trusts (where the trustee is not regulated). It is recommended that all family trusts, of which there are relatively few, are included within the scope of the Money Laundering Order. Draft legislation to implement this recommendation is due to be debated by the States Assembly in June 2016.

With respect to the regulatory requirements regarding customer due diligence the assessors noted that *"the financial institutions met during the on-site visit clearly demonstrated that they are highly knowledgeable in respect of their AML/CFT obligations However for customers that are trustees the*

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<sup>8</sup> An equity security that is wholly owned by whoever holds the physical stock certificate. The issuing firm neither registers the owner of the stock, nor does it track transfers of ownership. The company disperses dividends to bearer shares when a physical coupon is presented to the firm.

*assessors noted that financial institutions do not always request a copy of the trust deed/letter of wishes, or take any other appropriate measures”.*

In addition the assessors noted that *“recent court cases revealed the importance that the ‘letter of wishes’ could have in determining in practice who might be the controller.”* Consequently, it is recommended that financial institutions be required to ask for documents, such as the letter of wishes, to determine who the ultimate controlling beneficial owner is or to receive appropriate assurance and keep evidence that relevant documents (such as the trust deed/letter of wishes) do not contain contradictory information to other used sources, both at the start of the relationship and during the process of ongoing due diligence.

### **In closing**

In response to the assessors main concern i.e. relatively limited number of money laundering convictions and confiscations, Jersey is of the view that there have been considerable successes in the past concerning complex and difficult money laundering investigations and prosecutions.

Although there were no prosecutions or convictions for money laundering in the year prior to the assessment, there have been several prosecutions since, resulting in one conviction for money laundering in 2015 and four in 2016, including in the ground breaking Windward Trading case, where £3.6 million was confiscated.

Nonetheless, the Islands’ authorities have agreed to take on board the recommendations of the MONEYVAL Report and to consider those areas where there may be scope for improvement, Ministers have committed to the injection of further resource into financial crime investigation and prosecution through working hand in hand with the Attorney General, the SoJP and the JFSC.

This will further increase the Island’s capacity to investigate and prosecute serious financial crime matters in Jersey which are considered critical to Jersey’s reputation as a responsible leading international financial centre.