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1 BACKGROUND INFORMATION

1.1 UNDERSTANDING MONEY LAUNDERING

1.1.1 What is money laundering?

1. In its widest sense money laundering occurs whenever there is any form of relationship or arrangement involving property that represents the proceeds of criminal conduct for which a person is liable on conviction to imprisonment for a term of one or more years, or which represents the proceeds of a drug trafficking or terrorism offence. Proceeds of criminal conduct may be generated in a number of ways, for example by the illegal trafficking of drugs, firearms or even people.

2. Where a person carrying on a financial services business (a “relevant person”) enters into a relationship which it knows or suspects (or in some cases has reasonable grounds to know or suspect) involves criminally derived property, it will be engaged in laundering activity. Also, where the source of funds for the relationship may be legitimate, but the purpose of the relationship is unlawful, the relevant person will be engaged in laundering activity.

3. The proceeds of criminal conduct need not be in the possession of the person who originally committed the criminal offence, from which the proceeds are generated, for a money laundering offence to be committed. For example, a criminal may have passed his proceeds to other family members or associates and may not himself have retained any control or beneficial interest in the proceeds.

1.1.2 Characteristics of money laundering

4. Common descriptions of money laundering include:

   “the processing of illegal or dirty money through a cycle of transactions so that criminal proceeds emerge as apparently legal or clean money or assets”

   “turning dirty money into money that appears to have derived from a legitimate source”

5. These descriptions accurately describe examples of money laundering, but they do not adequately describe what money laundering is, so as to provide a relevant person and its employees with sufficient knowledge to be able to identify the activity in all of its guises. Without a broader awareness of what money laundering may involve, finance sector employees may fail to identify relationships being used to launder property simply because the activity does not follow the patterns they have come to expect from their anti-money laundering training.

6. In order to accurately describe money laundering, it is important to initially examine what it is not. The term money laundering is itself a misnomer. Firstly it is not an activity that exclusively involves money, but may involve any form of tangible or intangible property that has been derived directly or indirectly, in whole or in part, from crime. Secondly the term ‘laundering’ encourages the perception that it is a process by which criminals seek to ‘wash’ or ‘clean’ their criminal property, so that at the end of the process the property has a different appearance from that which it once had. The common perception is that criminals will seek to do this by utilising a number of different types of products, services, currencies and jurisdictions. This is not always the case. Consider the following example:

   A criminal deposits the proceeds of a street robbery into a bank account. The following day he withdraws some of the money and spends it.

7. Did the criminal use the bank to launder the money? The answer is of course yes, despite the fact that the bank does not appear to have helped him to ‘wash’ the property or even change its appearance. The bank will have committed an offence if it knew or suspected the criminal was engaged, or had been engaged in, criminal conduct or had benefited from criminal conduct (Article 32(1)(b)(i) of the Proceeds of Crime (Jersey) Law 1999 (the “Proceeds of Crime Law”)).
8. Consider a further example:

A criminal settles a property previously purchased with the proceeds of crime into a trust administered by a trust company in Jersey. The property remains in the trust.

9. Has the trust company been utilised to launder the property? The answer is of course yes, despite the fact that the trust company has not changed or converted the property. Article 33(1) of the Proceeds of Crime Law provides that an offence is committed if a person acquires, uses or has possession of property, knowing that the property represents, in whole or in part, directly or indirectly, the proceeds of another person’s criminal conduct.

10. Traditionally money laundering has been described by reference to three distinct phases, as follows:

- Placement: The funds generated from crime are placed into the financial system either directly or indirectly. This is the point at which the proceeds of crime are most apparent. Deposit takers, money transmitters, bureaux de change and cash based businesses are most vulnerable to being used at this stage.

- Layering: The illicit proceeds are separated from their criminal source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity. This stage can involve a range of different businesses, products and entities, such as companies and trusts within multiple jurisdictions.

- Integration: Once the criminal origin of the funds has been obscured, they are integrated back into the economy as legitimate funds or assets. All financial and non-financial businesses and professions are vulnerable to being used at this stage.

11. The traditional model is useful insofar as it goes, but it does not adequately explain a host of situations in which money laundering occurs where the facts do not fit the model. In some cases, money laundering may be more about disguising ownership of property rather than any of the three stages described above.

12. Consider this example:

A customer is both a director and a shareholder of a Jersey company administered by a trust company. The Jersey company owns stock in Company X. Acting on inside information about Company X, the director requests the company, administered by the trust company, to sell the stock. It does so.

13. Has the corporate service provider assisted in the laundering of property? The answer is yes. Again, the service provider may commit an offence under Article 32(1)(b)(i) of the Proceeds of Crime Law. Does this scenario fit into the traditional three staged model of money laundering? No. There is no placement of property, there is no layering and as yet there has been no integration.

14. The perception that money laundering always occurs as some form of staged process involving the washing of criminal property ignores the fact that relationships which involve legitimate property can also pose a laundering threat. Consider the following example:

A legitimate businessman earns income through legitimate business activities outside of his home jurisdiction. The income is paid into an account in Jersey. In breach of the law in his home jurisdiction he does not declare the income to his revenue authority.

15. Is the bank in Jersey laundering his money? The answer is that it may be, despite the fact that it is handling legitimately earned money and that it is not changing the appearance of or converting the property in any way (under Article 33(1) of the Proceeds of Crime Law).
1.2 THE NEED TO COMBAT MONEY LAUNDERING

16. Crimes are generally committed to enable someone to benefit from the proceeds. Whilst criminal conduct and the associated laundering of the proceeds cannot be wholly prevented, putting obstacles in the way of criminals and making it more difficult and costly to launder proceeds acts as a powerful disincentive. As a result, robust requirements, together with legislation that prohibits money laundering, are powerful tools in the fight against crime. Minimising the accessibility of criminal proceeds will also help to reduce the incentive of crime as a lifestyle.

17. Apart from the compelling social reasons for prohibiting money laundering, there are also sound national economic reasons for doing so. The perception of Jersey as a respectable and well regulated financial centre in which to do business and invest funds depends on its reputation for honesty and integrity. Property derived from crime has the potential to undermine national economies and to irreparably damage the reputation of an individual business. The presence of strong anti-money laundering legislation and regulation will deter criminals from seeking to launder their ill-gotten gains through Jersey.

18. Reputations can be severely damaged if international bodies such as the International Monetary Fund (the “IMF”) and the Financial Action Task Force (the “FATF”) judge a financial centre to be failing in its fight against money laundering. Conversely, Jersey continues to benefit from being judged as compliant with international standards for the prevention and detection of money laundering.

1.3 HOW IS MONEY LAUNDERED?

19. As criminals become increasingly more sophisticated, the number of ways in which money can be laundered becomes almost limitless and all financial services and products are, to a greater or lesser extent, vulnerable to abuse. A relevant person must consider the various ways in which its services and products may be used to achieve money laundering objectives. Clearly, the most vulnerable aspect of a transaction designed to launder money is that its purpose is just that – money laundering – rather than a genuine commercial or economic rationale. Vigilance as to the economic or commercial rationale for relationships and transactions, so as to be able to identify those which have no such rationale, is the most effective way of identifying possible money laundering.

1.3.1 Typology exercises

20. The FATF undertakes regular typology exercises which identify and describe trends in the means used by those seeking to launder money or finance terrorism. The results of the typology work conducted by the FATF, including a report by the Working Group on Typologies on the misuse of corporate vehicles including trust company service provider activity can be found at:

http://www.oecd.org/findDocument/0,3354,en_32250379_32237277_1_32247552_1_1,00.html.

21. MONEYVAL is an associate member of the FATF. It conducts typological studies of money laundering and terrorist financing methods, trends and techniques, which can be found on its website:

www.coe.int/t/dghl/monitoring/moneyval/Typologies/Typologies_en.asp.

22. The Egmont Group is an international grouping of financial intelligence units. A library of sanitised cases can be found on its website:

www.egmontgroup.org/library_sanitized_cases.html.

23. Jersey’s AML/CFT Strategy Group published an Island strategy to counter money laundering and the financing of terrorism in 2008. The group identified a need to raise awareness of typologies that are relevant to Jersey including the risks arising from the nature of the customer base and products associated with Jersey as an international finance centre. As a result, the
Law Officers’ Department, the Joint Financial Crimes Unit (the “JFCU”) and Jersey Financial Services Commission (the “Commission”) jointly commissioned a document in which local case studies, where available, are used; otherwise international cases are included where they are relevant to Jersey businesses. The typologies can be found on the Commission’s website:

[www.jerseyfsc.org/anti-money_laundering/typologies.asp](http://www.jerseyfsc.org/anti-money_laundering/typologies.asp)

### 1.3.2 Professional services to the financial sector

24. Criminals have responded to the anti-money laundering measures taken by the traditional financial sector over the past decade and have sought other means to convert their proceeds of crime or to mix them with legitimate income before they enter the banking system, thus making them harder to detect. Internationally, professionals such as lawyers, notaries, other independent legal professionals and accountants who interface with the financial sector have frequently been used as a conduit for criminal property to enter the financial system.

25. The FATF has recognised the access that such professionals provide for their clients to financial services and products and has extended the scope of certain of its Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing (the “FATF Recommendations”) to also cover such professionals, often referred to as gatekeepers.

26. When a professional is a customer of a relevant person, it may not be immediately obvious to a relevant person whether the professional is acting on its own behalf, or on behalf of a client. In addition, professionals frequently operate client accounts through which client funds are transferred, which may not conform to an expected pattern of activity, making it difficult for a relevant person to identify money laundering activity.

### 1.3.3 Other FATF designated non-financial businesses and professions

27. In addition to lawyers, notaries, other independent legal professionals and accountants, the scope of certain of the FATF Recommendations have been extended to operators of casinos, estate agents and dealers in precious metals and stones (in EU and Jersey legislation requirements have been extended to all dealers in high value goods when accepting cash of €15,000 or more), as a result of the findings of its work on money laundering typologies. The FATF has identified that, internationally, such businesses are frequently used by criminals as a means of laundering the proceeds of crime.

### 1.4 UNDERSTANDING TERRORIST FINANCING

#### 1.4.1 What is terrorism?

28. Terrorism is defined in the Article 2 of the Terrorism (Jersey) Law 2002 (the “Terrorism Law”) as the use or threat of action where:

- The action: (a) involves serious violence against a person; (b) involves serious damage to property; (c) endangers a person’s life, other than that of the person committing the action; (d) creates a serious risk to the health or safety of the public or a section of the public; or (e) is designed seriously to interfere with or seriously to disrupt an electronic system;
- The use or threat is designed to influence the States of Jersey or the government of any other place or country or to intimidate the public or a section of the public; and
- The use or threat is made for the purpose of advancing a political, religious or ideological cause.

29. Terrorism contrasts with other types of criminal activity where financial gain is generally the ultimate objective. Whilst there is a difference in goals, terrorist organisations still require financial support in order to achieve their aims and a successful terrorist group, like any criminal
organisation, is therefore one that is able to build and maintain an effective financial infrastructure.

30. The intelligence that can be gained into terrorist networks through knowledge of their financial transactions and dealings is vital in protecting national and international security and upholding the integrity of national and international financial systems.

31. Further guidance on detecting terrorist financing is available from the FATF publication - Guidance for Financial Institutions in Detecting Terrorist Financing (published in April 2002):


and more recent FATF paper on terrorist financing (published in February 2008):


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<th>1.4.2 Characteristics of terrorist financing</th>
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<td>32. Terrorists often control funds from a variety of sources around the world and employ increasingly sophisticated techniques to move these funds between jurisdictions. Terrorists and their organisations need finance for a wide variety of purposes - recruitment, training, travel, materials and safe haven protection.</td>
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<td>33. Although the direct financial costs of carrying out terrorist attacks are often very low, in comparison to the damage that they can yield, total funds required by terrorist networks may be large, so as to cover recruitment, planning and procurement. The United States (“US”) authorities estimate the total cost of the planning and execution of the September 11th attacks in the US as only US$200,000. United Kingdom (“UK”) experience bears out the relatively low costs required for an effective terrorist attack. The 1993 ‘Bishopsgate bomb’ in the City of London, which caused both loss of life and over £1 billion of damage to property, is estimated to have cost only £3,000.</td>
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<th>1.4.3 Recognising terrorist financing</th>
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<td>34. Disrupting funding flows involves both systemic safeguards and targeted financial sanctions informed by counter-terrorism intelligence.</td>
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<td>35. The risk of funds destined to support terrorism entering the financial system can be reduced if a relevant person applies satisfactory anti-money laundering and counter terrorist financing strategies and, in particular, customer due diligence measures.</td>
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<td>36. Individuals and organisations who are covered by targeted financial sanctions in Jersey (those listed by the United Nations (“UN”) Sanctions Committee under UN Security Council Resolution 1390 (UNSCR 1390), or who are suspected of committing or facilitating terrorist acts) can be found on the Commission’s website at:</td>
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www.jerseyfsc.org/the_commission/international_co-operation/terrorism.asp

and on the Chief Minister’s Department’s website at:


Other lists of terrorist suspects, such as that published by the US Treasury Office of Foreign Assets Control will also assist. See paragraph 2.3 of this Part.

37. However, many financial disclosures that are subsequently determined to highlight a link to terrorism are in fact made on the basis of suspicion of more general criminality (e.g. low level fraud) or unexplained activity, and may not initially appear to be directly related to the financing of terrorist activity at all. Internationally, the number of suspicious activity reports based on
suspected criminal activity that have resulted in the provision of valuable information about terrorist groups highlights evidence of the close links between crime and terrorism.

1.5 THE NEED TO COMBAT TERRORIST FINANCING

38. Terrorism is an increasingly destabilising force, with the potential to have an impact on any jurisdiction. As a result, international organisations such as the FATF and national governments are increasingly focusing on means of improving measures to prevent and detect terrorism and terrorist financing. Measures which enable terrorist financing to be identified at an early stage may prevent planned terrorist acts and will provide law enforcement with an insight into terrorist organisations. Disrupting funding will also create a hostile environment, constraining the capabilities of terrorists and helping frustrate their ability to execute attacks.

39. Business relationships with individuals or entities that support or commit acts of terror will expose a relevant person to significant reputational, operational and legal risks. The risk is even more serious if the terrorist involved is later shown to have exploited ineffective systems of control or a lack of effective due diligence.

1.6 HOW IS TERRORISM FINANCED?

40. Terrorist financing comes from two primary sources.

41. The first source is the direct financial support provided to terrorist groups by nation states, organisations, individuals and non-governmental organisations.

42. The second major source of terrorist funding is legitimate or illegitimate revenue-generating activity undertaken by terrorist organisations themselves. Criminality can provide a consistent revenue stream, and terrorist organisations will choose activities that carry low risks and generate large returns. The following financing activities are typical.

1.6.1 Extortion and kidnapping

43. This form of fundraising continues to be prolific and highly profitable. Monies are raised from within communities of which the terrorists are an integral part in return for 'protection', usually from the terrorists themselves. In some cases businesses subject to extortion by terrorist organisations are coerced by the terrorists into laundering funds through the business. Terrorist organisations in some jurisdictions also use kidnapping as a means of raising funds, while also raising the profile of their organisation.

1.6.2 Smuggling

44. Smuggling across borders has become one of the most profitable activities for terrorist organisations. Successful smuggling operations require co-ordination, and established distribution networks through which smuggled goods can be sold for profit.

1.6.3 Drug trafficking

45. The proceeds of drug trafficking activity can be a highly profitable source of funds for terrorist groups and nation states that sponsor terrorism. Even if a terrorist group is not directly involved in the importation or distribution of drugs, they often profit from the activity by allowing drug suppliers and dealers to operate within the communities that they control and through the imposition of levies.

1.6.4 Fraud

46. Fraud has always been a widespread method of raising terrorist funds. In recent years, however, the use of fraud and particularly mortgage and cheque/credit card fraud to raise terrorist funds has risen exponentially. Clear evidential links have been shown between these methods of terrorist fundraising and recent European terrorist atrocities, including those committed in London and Madrid.
1.6.5 Counterfeiting

47. Terrorists have been quick to seize on the opportunities provided by the massive worldwide trade in counterfeit goods, which is estimated to be worth US$600 billion per annum. Profit margins on trafficked cocaine may be 100%, whilst pirated computer software may yield profits of 1,000%. Terrorists as diverse as the Continuity IRA, Chechnyan terrorists, Al-Qua’ida and Hezbollah are known to raise a substantial portion of their funds from the trafficking of a wide variety of counterfeit goods, largely originating from China, South-East Asia and South America.

1.6.6 Charities and fundraising

48. Community solicitation and fundraising appeals provide a very effective means of raising funds to support terrorism. Often such fundraising is carried out by organisations with the appearance of having 'charitable' or 'relief' status. Fundraising activity may be targeted at particular communities where individuals either donate money knowing that it will be used for terrorist purposes, but more often believe that they are giving for good causes. Often, the charitable organisations to which they make donations do in fact engage in some charitable work, in addition to acting as effective terrorist fund raising mechanisms.

1.6.7 Donations

49. It is common practice within certain communities for amounts calculated as a percentage of income to be donated automatically to charity. Obviously it would be wrong to assume that such donations are either made with the intention of, or are used for, the benefit of terrorists. Nevertheless it should be recognised that both community donations and donations from wealthy private individuals and nation states that support terrorism are an important source of funding for many terrorist organisations.

1.7 MOVEMENT OF TERRORIST FUNDS

50. There are three main methods by which terrorists move money or transfer value. The first is through the use of the financial system, the second involves the physical movement of money (for example, through the use of cash couriers) and the third is through the international trade system.

51. The risk that the financial system may be used to move funds is addressed through the Community Provisions (Wire Transfers) (Jersey) Regulations 2007, which implement in Jersey FATF Special Recommendation VII and require that full originator information accompanies any such transfer. The risk that funds may be physically moved is addressed through the Customs and Excise (Amendment No. 6) (Jersey) Law 2009 which implements in Jersey FATF Special Recommendation IX.

1.8 THE INTERNATIONAL PERSPECTIVE

1.8.1 Jersey’s commitments to matching international standards

52. Jersey is fully committed to acting with its international partners in preventing and detecting money laundering and terrorist financing. In October 2003, the President of the Policy and Resources Committee of the States of Jersey, predecessor to the role of Chief Minister, made a commitment to adhere to the FATF Recommendations. The Handbook encompasses the requirements of the FATF Recommendations.

53. Money laundering and the financing of terrorism are global phenomena that have provoked a concerted international response by responsible members of the international community. Jersey not only supports but also plays an active role in shaping international initiatives to prevent money laundering and terrorist financing, through the role played by officers of the Commission on international committees.

54. Jersey must at all times have regard for international initiatives against which its own framework for preventing and detecting money laundering and terrorist financing will be appraised. To
maintain its reputation of probity, Jersey must be seen to comply with internationally recognised standards of best practice.

55. The following are some of the most important international initiatives to combat money laundering and terrorist financing.

1.8.1.1 FATF Recommendations

56. Full details of the FATF Recommendations may be obtained by visiting:


57. In February 2004, the FATF issued a detailed Methodology for Assessing Compliance with the FATF Recommendations (which is periodically updated). This Methodology has been approved by the IMF and the World Bank, and is used by the FATF, FATF-style regional bodies, the Offshore Group of Banking Supervisors, and the IMF and World Bank as part of assessment programmes of the financial sector.

1.8.1.2 Basel Committee on Banking Supervision (“Basel Committee”)

58. The Basel Committee Paper on Customer Due Diligence (published in October 2001) has been highly influential in promoting the importance of implementing effective customer due diligence measures in the management of risk.

59. Additional information about the Basel Committee including the full text of its papers can be obtained by visiting:

www.bis.org.

1.8.1.3 United Nations

60. Countries are expected to become party to and implement fully the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the “Vienna Convention”), the 1999 UN International Convention for the Suppression of the Financing of Terrorism, the 2000 UN Convention on Transnational Organized Crime (the “Palermo Convention”), and the 2003 UN Convention against Corruption.

61. In particular, countries should:

- Criminalise money laundering on the basis of the Vienna and Palermo Conventions; and
- Ensure that the intent and knowledge requirements of the offence of money laundering are consistent with the standards set forth in the Vienna and Palermo Conventions.

62. Additionally, the UN Sanctions Committee requires countries to freeze the assets of terrorists and their associates, close their access to the international financial system and, consistent with legislation, make public the list of terrorists whose assets are subject to freezing. See paragraph 36 of this section.

1.8.1.4 Egmont Group

63. The Egmont Group (“Egmont”) is an informal grouping of financial intelligence units that has been established to facilitate international cooperation. Egmont has published information on the characteristics of a financial intelligence unit and principles on information exchange between such units. The JFCU is a member of the Egmont Group.

64. A full list of Egmont publications is available at:

1.8.1.5 Wolfsberg Group

65. The private sector Wolfsberg Group of banks has also published best practice guidelines in relation to private banking, correspondent banking, the suppression of the financing of terrorism, and monitoring, screening and searching.

66. More recently, it has published (i) a list of frequently asked questions on anti-money laundering issues in the context of investment and commercial banking, and on correspondent banking (ii) guidance on a risk-based approach for managing money laundering risks, and on mutual funds and other pooled vehicles, and (iii) a statement against corruption. See: www.wolfsberg-principles.com.

1.8.2 Independent assessments

1.8.2.1 International Monetary Fund

67. In 1999, the IMF and the World Bank agreed to create a joint Financial Sector Assessment Programme ("FSAP") specifically designed to assess the strengths and weaknesses of countries' financial sectors. In recent years, the IMF and the World Bank have taken a central role in developing, implementing and assessing internationally recognised standards and codes in areas that are crucial for the efficient functioning of a modern economy.

68. In July 2000, the IMF, at the request of the Financial Stability Forum (a body set up by the G7 countries), extended its financial sector work to include offshore and international financial centres through a voluntary programme of assessments and technical assistance (the OFC assessment programme). IMF staff undertake detailed assessments of the extent to which offshore and international financial centres meet the standards advocated by international standard setters, and of any further action required to meet these standards.

69. In May 2008, the IMF agreed to integrate the OFC assessment programme with the FSAP.

70. Each assessment follows a similar approach in examining a jurisdiction's adherence to international standards and reports are published on the IMF's website: (http://www.imf.org/external/np/ofca/ofca.asp).
2 LEGISLATIVE FRAMEWORK FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM

2.1 PROCEEDS OF CRIME LAW AND DRUG TRAFFICKING OFFENCES LAW

1. The Proceeds of Crime Law (Articles 32, 33 and 34) and the Drug Trafficking Offences (Jersey) Law 1988 (the “Drug Trafficking Offences Law”) (Articles 30, 37 and 38) contain the following offences:

   - Assisting another person (A) to retain the benefit of criminal conduct knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct.
   - Acquiring, using, or possessing the proceeds of criminal conduct knowing that any property represents another person's proceeds of criminal conduct.
   - Concealing, disguising, converting, transferring or removing the proceeds of criminal conduct for the purpose of avoiding prosecution for a specified offence, or the making of a confiscation order, knowing or having reasonable grounds to suspect that property represents the proceeds of crime.

2. For the purposes of the Proceeds of Crime Law, criminal conduct may be described as any conduct, except drug trafficking and terrorist offences, wherever committed which, if it had been committed in Jersey, would constitute an offence in Jersey which, upon conviction, may render a person liable to a sentence of imprisonment of one year or more. Similarly, the Drug Trafficking Offences Law criminalises the laundering of the proceeds of drug trafficking, wherever committed. This means that offences committed overseas may also constitute predicate offences for the purposes of Jersey’s anti-money laundering legislation, regardless of whether the conduct would also have been an offence overseas.

3. It is not necessary for a person to know or suspect a specific type of criminal conduct or that particular property is definitely the proceeds of crime in order to commit an offence of money laundering.

4. For the purposes of both laws, property is deemed to be the proceeds of criminal conduct or drug trafficking where it represents a benefit arising from such conduct.

5. The substantive offences outlined above are punishable by a maximum term of imprisonment of 14 years, or a fine or both.

6. The Proceeds of Crime Law (Article 34A) and the Drug Trafficking Offences Law (Article 40) make it an offence to fail to disclose information that comes to the attention of any person in the course of their trade, profession, business or employment (except the carrying on of a financial services business) as soon as is reasonably practicable, which causes them to know or suspect that another person is engaged in money laundering. The requirement to make a report is placed on both the person carrying on the trade, profession, business or employment and on each individual that is employed by that person. An employee has a defence to such a charge, however, if the employee discloses the information or other matter that leads to their knowledge or suspicion to an appropriate person, in accordance with the procedure established by the person's employer for the making of such disclosures.

7. The Proceeds of Crime Law (Article 34D) and the Drug Trafficking Offences Law (Article 40A) also make it an offence for a person that carries on a financial services business to fail to disclose knowledge or suspicion of money laundering, which can be committed where there are reasonable grounds to know or suspect that another person is money laundering. This means that there is the possibility of criminal liability even where the defendant lacks actual knowledge or suspicion. The requirement to make a report is placed on both the relevant person and on each individual that is employed by that person. An employee has a defence to such a charge.
however, if the employee discloses the information or other matter that leads to their knowledge or suspicion to an appropriate person, in accordance with the procedure established by the person’s employer for the making of such disclosures.

8. The offence of failing to disclose is punishable by a maximum term of imprisonment of five years or a fine or both.

### 2.2 TERRORISM LAW

9. **Articles 15, 16, 17 and 18** of the Terrorism Law contain the following offences:

- Inviting another to provide property, receiving property or providing property and intending that it should be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism (raising funds for the purpose of terrorism).
- Possessing property and intending that it should be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism (use and possession of property).
- Entering into or becoming concerned in an arrangement as a result of which property is made available or is to be made available to another, knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism (funding or financing terrorism).
- Becoming concerned in an arrangement which facilitates the retention or control by, or on behalf of, another person of terrorist property by concealment, removal from the Island, transfer to nominees or in any other way. The offence is committed in all circumstances other than where a person is able to show that he did not know or had no reasonable cause to suspect that the arrangement related to terrorist property (money laundering).

10. It should be noted that in relation to this latter offence, the burden of proof is on a defendant to show that he did not know, or had no reasonable cause to suspect, in order to avail himself of the defence.

11. For the purposes of the Terrorism Law, terrorist property includes property that is likely to be used for the purpose of terrorism, the proceeds of the commission of acts of terrorism and proceeds of acts carried out for the purposes of terrorism. Property is deemed to be the proceeds of an act where it wholly or partly, directly or indirectly, represents the proceeds of the act.

12. The substantive offences within the Terrorism Law outlined above are punishable by a maximum term of imprisonment of 14 years, or a fine or both.

13. The Terrorism Law makes it an offence to fail to disclose information that comes to the attention of any person in the course of their trade, profession, business or employment (except the carrying on of a financial services business) as soon as is reasonably practicable, which causes them to believe or suspect that another person has committed an offence under **Articles 15 to 18**. The requirement to make a report is placed on both the person carrying on the trade, profession, business or employment and on each individual that is employed by that person. Again, a defence exists for an employee who makes a disclosure to an appropriate person, in accordance with the procedure established by the person’s employer for the making of such disclosures.

14. The Terrorism Law also makes it an offence for a person that carries on a financial services business to fail to disclose knowledge or suspicion of money laundering, which can be committed where there are reasonable grounds to know or suspect that another person is committing an offence under **Articles 15 to 18**. This means that there is the possibility of criminal liability even where the defendant lacks actual knowledge or suspicion. The requirement to make a report is placed on both the relevant person and on each individual that is employed by that person. Again, a defence exists for an employee who makes a disclosure
to an appropriate person, in accordance with the procedure established by the person’s employer for the making of such disclosures.

15. The offence of failing to disclose is punishable by a maximum term of imprisonment of five years or a fine or both.

16. The Terrorism Law also establishes a list of proscribed organisations, with which a relevant person may not deal.

### 2.3 UNITED NATIONS MEASURES (TERRORISM)

17. The Terrorism (United Nations Measures) (Channel Islands) Order 2001 (the “UN Terrorism Order”) contains the following relevant offences:

- Receiving or providing funds and intending that they should be used, or knowing or having reasonable cause to suspect that they may be used, for the purposes of terrorism.
- Other than under the authority of a licence granted by the Chief Minister’s Department of the States of Jersey, making any funds or financial services available to or for the benefit of persons who commit terrorism, to or for the benefit of persons controlled or owned by terrorists, or to or for the benefit of persons who act on behalf of persons who commit terrorism.
- Failing to disclose information which causes an institution to know or suspect that a customer or person with whom it has had dealings is a person who commits or attempts to commit or participates in terrorism or has committed an act of terrorism.

18. The Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (the “UN Al-Qa’ida and Taliban Order”) contains the following relevant offences:

- Making funds available to Usama bin Laden and any person designated by the UN Sanctions Committee under UN Security Council Resolution 1390 (a “listed person”).
- Failing to disclose information which causes an institution to know or suspect that a customer or person with whom it has had dealings is a listed person or person acting on behalf of a listed person or has committed an offence of making funds available to a listed person.

19. United Nations Sanction Measures extend beyond the financing of terrorism. Measures also include requirements to limit the supply and export of restricted goods, and limit the provision of certain technical assistance or training. Further information concerning United Nations Sanction Measures can be found at 2.7.6 of this section. Further information on sanctions legislation in place in Jersey can be found on the States of Jersey website: [http://www.gov.je/ChiefMinister/International+Relations/International+Agreements/Sanctions/](http://www.gov.je/ChiefMinister/International+Relations/International+Agreements/Sanctions/).

### 2.4 MONEY LAUNDERING ORDER

20. In addition to the legislation outlined above, a relevant person is required to comply with the Money Laundering (Jersey) Order 2008 (the “Money Laundering Order”), which places additional administrative responsibilities upon such persons. The Money Laundering Order is issued under Article 37 of the Proceeds of Crime Law.

21. The objective of the Money Laundering Order is to ensure that a relevant person has in place an appropriate framework to facilitate the identification and reporting of known or suspected money laundering and terrorist financing activity and holds information that will facilitate the investigation of such activity by the JFCU.

22. Specifically, the Money Laundering Order requires a relevant person to:
- Apply customer due diligence measures.
- Maintain appropriate policies and procedures in order to prevent and detect money laundering and terrorist financing that have regard to the risk of laundering or financing taking place.
- Keep records of customer due diligence that has been completed and transactions carried out.
- Maintain the reporting procedures that are referred to in the Proceeds of Crime Law, Drug Trafficking Offences Law and Terrorism Law and make disclosures to the JFCU in line with a prescribed reporting form.
- Make its employees aware of the policies and procedures that are maintained in order to prevent and detect money laundering and terrorist financing and the statutory and regulatory requirements that apply to that relevant person and its employees.
- Train its employees to recognise and handle suspicious transactions.
- Appoint a Money Laundering Compliance Officer and Money Laundering Reporting Officer (“MLRO”).

23. The Money Laundering Order applies to: (i) a person that carries on a financial services business in or from within Jersey; and (ii) a Jersey body corporate or limited liability partnership carrying on a financial services business in any part of the world. Article 10A of the Money Laundering Order explains the application of the Money Laundering Order to business that is conducted outside Jersey.

24. Article 37 of the Proceeds of Crime Law provides an offence of failing to comply with the Money Laundering Order punishable by a fine (for a body corporate) and a maximum term of imprisonment of two years or a fine or both for an individual.

25. The Money Laundering Order refers only to money laundering. This is because the Proceeds of Crime Law defines money laundering as including laundering the proceeds of drug trafficking and terrorist financing.

2.5 DISCLOSURES – GENERAL

26. Any disclosure of information concerning knowledge, suspicion or reasonable grounds for knowledge or suspicion pursuant to the above legislation will not be treated as a breach of any restriction imposed by statute, contract or otherwise. As such, the duty of customer confidentiality should never override the duty to disclose information concerning money laundering or terrorist financing.

27. Any person that is employed by a relevant person will satisfy his obligations to disclose by making an internal suspicious activity report in accordance with the procedures laid down by his employer (and which are described in Part 5 of the Money Laundering Order).

2.6 TIPPING OFF

28. Under the Proceeds of Crime Law and Drug Trafficking Offences Law, a person will be guilty of one of the tipping off offences if he discloses information to anyone that is likely to prejudice an investigation into money laundering or a terrorist investigation:

- Whilst knowing or suspecting that an investigation into money laundering or terrorist financing is being, or is about to be, conducted; or
- Whilst knowing or suspecting that a disclosure has been or will be made to a police officer; or
Whilst knowing or suspecting that a disclosure has been made to the appropriate internal reporting officer at his place of employment (the MLRO in the case of a relevant person).

29. The tipping off offences under the Terrorism Law contain an objective test. Offences are committed where an interference with material, or disclosure of information is likely to prejudice an investigation or proposed investigation. This includes the disclosure of information that a suspicious activity report has been made (or is to be made), or that an investigation is underway (or proposed).

30. Tipping off can occur when information or other matter likely to prejudice an investigation or proposed investigation is disclosed to any other person. The information or other matter does not need to be disclosed directly to the customer or individual under suspicion, and disclosure may mean little more than communicating or advising a matter.

31. However, a person will not have committed a tipping off offence if he is able to prove one of the following:
   - That he is a professional legal advisor disclosing the information in connection with, or in contemplation of, legal proceedings or the giving of legal advice (except where there is a view to furthering a criminal purpose); or
   - That he did not know or suspect that the disclosure or interference was likely to affect a terrorist investigation.
   - That he had a reasonable excuse for the disclosure or interference.

32. No offence is committed where disclosure of a report would not be likely to prejudice an investigation. For example, where the existence and contents of a disclosure have already been revealed in the course of criminal proceedings, it is unlikely that any prejudice would be caused by the subsequent disclosure of the report to the individual concerned.

33. Enquiries by a relevant person of a customer to obtain additional customer due diligence information (e.g. to ascertain source of funds, or to establish the precise nature of a transaction being undertaken) are unlikely to constitute a tipping off offence if managed appropriately.

2.7 LEGAL AREAS INTER-RELATING WITH REQUIREMENTS TO PREVENT AND DETECT MONEY LAUNDERING AND TERRORIST FINANCING

2.7.1 Customer confidentiality

34. In common with the UK and other jurisdictions, Jersey’s common law (law established by the courts) protects the rights of legitimate customers of relevant persons to have their information protected from unauthorised disclosure. However, in certain circumstances, as is the position in other jurisdictions, that obligation of confidentiality may be lifted. These circumstances, known as the Tournier principles (Tournier v. National Provincial and Union Bank of England (1924)), are where:
   - The disclosure is pursuant to statute (i.e. through a statutory compulsion to disclose or through statutory permission for disclosure);
   - There is a public duty to disclose;
   - It is in the relevant person’s interest to disclose; or
   - There is express or implied customer consent for disclosure.

35. Where one relevant person (A) wishes to establish a business relationship with another relevant person (B) on behalf of one or more of A’s customers, disclosure to B of the necessary customer due diligence information (including information on A’s underlying customers) is likely to be in A’s interest (otherwise it may not be able to establish such a relationship).
Notwithstanding this, A may also wish to seek the express consent of its customers to provide relevant information to B in appropriate circumstances, and must have regard for the Data Protection (Jersey) Law 2005 where disclosure would involve personal data relating to an individual.

2.7.2 Data protection

Subject access provisions

36. Under Article 7 of the Data Protection (Jersey) Law 2005 (the “Data Protection Law”), on making a request to a data controller (i.e. any organisation that determines the purposes for which and manner in which personal data is to be processed) an individual is entitled to:

- A description of:
  - The personal data being processed of which the individual is the data subject;
  - The purposes for which the data is (or is to be) processed by the data controller; and
  - The recipients or classes of recipients to whom the data is or may be disclosed;
- Obtain any information constituting personal data processed by a data controller of which that individual is the subject; and
- Obtain information available to the data controller as to the source of that data.

37. Such a request is known as a “subject access request”. Data controllers must respond to subject access requests promptly, and in any case within 40 days. The 40 days begin from the date of receipt of the request by the data controller or date of receipt of any further information that may be needed to identify the applicant and locate the personal data sought, and, if a fee is charged, the date of receipt of the fee (of up to £10 maximum).

Exemptions from subject access provisions

38. Data controllers may withhold information on an individual that also identifies another individual, for example information identifying a bank cashier as the source of the data, unless that individual has consented to the disclosure or it is reasonable in all the circumstances to disclose the information without their consent (see Articles 7(7), (8), (9) and (10) of the Data Protection Law).

39. The Data Protection Law provides certain exemptions to the right of subject access, of which Articles 29 and 31 of the Data Protection Law and the Data Protection (Subject Access Exemptions) (Jersey) Regulations 2005 (the “Subject Access Exemption Regulations”) are the most relevant.

40. Article 29 of the Data Protection Law provides that personal data is exempt from Article 7 in any case to the extent to which the application of that provision would be likely to prejudice the prevention, detection or investigation of crime. Article 31 exempts personal data from the subject access provisions in any case to the extent to which the disclosure of that personal data would be likely to prejudice the proper discharge of the regulation of financial services. Article 2 of the Subject Access Exemption Regulations provides that where the disclosure of personal data in response to a subject access request would lead to a tipping off offence, that personal data will be exempt from the subject access provisions of Article 7 of the Data Protection Law.

41. Even when relying on an exemption, however, data controllers should provide as much information as they can in response to a subject access request.

42. It is not possible to lay down any general rules as to how to deal with a subject access request, as the requirements of Article 7 of the Data Protection Law and the application of the above exemptions must be considered on a case-by-case basis. It should never be assumed that the
exemptions apply automatically to suspicious activity reports. Each time a subject access request is received, the business concerned must carefully consider whether, in that particular case, disclosure of the information in the suspicious activity report would be likely to prejudice the prevention or detection of crime, the regulation of financial services or lead to an offence of tipping off.

43. In determining whether the exemptions apply, it is legitimate to take account of the particular way in which financial crime is investigated. The investigation and detection of money laundering and terrorist financing often depends on fitting together a number of separate pieces of information. Thus even though a particular piece of information (for example, the information in a suspicious activity report) does not show clear evidence of criminal conduct when viewed in isolation, it might ultimately form part of the jigsaw which enables law enforcement agencies to detect crime.

44. Where a relevant person is in doubt as to whether disclosure would be likely to prejudice an investigation or potential investigation (such as might lead to the commission of a tipping off offence), it should approach the JFCU for guidance. Businesses should bear in mind the requirement to respond promptly to a subject access request and in any event within 40 days and ensure that they approach the JFCU in good time.

45. It should be noted that, where a person withholds a piece of information in reliance on the exemptions provided by Articles 29 and 31 of the Data Protection Law, or Article 2 of the Subject Access Exemption Regulations, the data controller is not required to tell the individual that any information has been withheld. The data controller can simply leave out that piece of information and make no reference to it when responding to the individual who has made the request.

46. It is advisable for data controllers to keep a record of the steps they have taken in determining whether disclosure of a suspicion would involve tipping off and/or the availability of the Article 29 or 31 exemptions. This might be useful in the event of the data controller having to respond to enquiries made subsequently by the Data Protection Commissioner or the courts.

47. When an employee of a relevant person makes a suspicious activity report to an MLRO but the MLRO has not passed on a report to the JFCU, the same principles outlined above also apply. While this particular suspicious activity report may not have raised enough suspicion for the MLRO to deem it worth passing to the JFCU, the internal report may be the basis for establishing a pattern of future transactions that arouse suspicion. Therefore, when dealing with a subject access request the same considerations apply as set out above.

### 2.7.3 Constructive trust

48. The risk of becoming a constructive trustee is inherent in the conduct of business by a relevant person. Where a relevant person holds property that it knows, or suspects, or has reasonable grounds to know or suspect does not belong to its customer, the relevant person may be regarded in law as a constructive trustee. In such circumstances, a relevant person may be deemed to hold the property on trust for the rightful owner. In the event that a relevant person subsequently transfers or utilises that property to the detriment of the interests of the rightful owner, it can be held legally accountable for breach of trust.

49. In the area of law dealing with breach of trust, constructive trusts tend to be applied on two bases:

- "dishonest assistance"; and
- "knowing receipt".

50. In the case of "dishonest assistance", a relevant person may find itself liable if it has helped another to carry out a fraud, e.g. it has paid funds away to a third party at the request of its customer.
51. In the case of "knowing receipt", a relevant person will have used the funds in question for its own benefit, e.g. using them to repay a customer's overdraft, and will be liable for the amount that it has received, rather than being potentially liable for the whole of the amount lost by virtue of fraud - which would be the case in a "dishonest assistance" case.

52. A particular issue arises in the context of "dishonest assistance", where a relevant person forms a suspicion of money laundering, makes a report to the JFCU, is given consent to proceed with a transaction, and then subsequently does so - where the concern is that disclosure of such a suspicion may become an essential component in fixing constructive trust liability on the reporting person. However, a relevant person in such a position may be able to rely on:

- Articles 32(3), 33(5), 34A, and 34D of the Proceeds of Crime Law which say that a disclosure shall not be treated as a breach of any restriction upon disclosure of information imposed by statute, contract, or otherwise. There are similar provisions in Articles 37(3), 38(5), 40 and 40A of the Drug Trafficking Offences Law and Article 21 of the Terrorism Law.

- English case law on "dishonest assistance" (Royal Brunei Airlines v Tan [1998] 2 AC 378), where the test for "dishonest assistance" is formulated in such a way that, in circumstances where a person has a suspicion and reports this to the JFCU, i.e. acts honestly, it is unlikely that the person would be found to be dishonest - a condition for fixing constructive trust liability.

53. Another issue arises in circumstances where a relevant person is required to hold customer due diligence on the beneficiaries of a trust, and where a trustee requests a relevant person to make a payment to a person who is not entitled to receive trust funds. Here again, English case law may provide comfort that, in circumstances where a relevant person is instructed to pay funds to a third party, who is not entitled to receive those funds, and where the relevant person is under no obligation to determine entitlement to funds, the business will not be found to have acted dishonestly and will not be fixed with a constructive trust liability.

54. Notwithstanding this, the risk of constructive trusteeship is a powerful disincentive for a relevant person to enter into or continue relationships on the basis of inadequate customer due diligence. Effective use of customer due diligence information, including source of funds and source of wealth, can help a relevant person to guard against potential constructive trust liability arising out of fraudulent misuse or misappropriation of funds, as well as against money laundering.

2.7.4 Civil proceedings

55. Refusal to act upon a customer's request for a transaction to take place (for example, as a result of the JFCU refusing to give consent for a transaction to proceed) may lead to civil proceedings being instituted by the customer for breach of contract or mandate.

56. Early discussion with the JFCU will help to mitigate such a risk.

57. A relevant person might also reduce the potential threat of civil proceedings by ensuring that terms of business that govern customer relationships specifically exclude breaches in circumstances where following a customer instruction might lead to the commission of a criminal offence. Additionally, a case recently heard by the English Court of Appeal (K v NatWest [2006] EWCA Civ 1039) concluded that it could not be right for a relevant person to be liable for the non-performance of a contract with a customer, where the performance of the contract would result in the commission of a criminal offence. The Royal Court has yet to consider how the Court of Appeal ruling might be applied locally.

2.7.5 Electronic records

58. The Electronic Communications (Jersey) Law 2000 (the "Electronic Communications Law") clarifies the status of electronic communications. Currently, the Electronic Communications Law:
• Provides legal recognition for electronic communications and documentation.
• States that electronic communications and documentation will be an admissible form of evidence in legal proceedings, if subject to acceptable safeguards ensuring integrity.
• Where not explicitly provided for by legislation, enables electronic communications and documentation to be used, rather than paper based documentation, with the consent of the States department or other statutory authority.

### 2.7.6 Trade prohibition and targeted financial sanctions

59. International sanctions are imposed in Jersey in two ways. In the case of UN sanctions, the Security Council of the UN determines when and against whom sanctions are to be applied. The Security Council will, by resolution, call upon member countries to apply whatever steps are necessary to give effect to its decision to impose sanctions. The UK affects such decisions by Orders in Council under the United Nations Act 1946. The same Act allows the Privy Council, with the agreement of the Island’s authorities, to make orders giving effect to such a decision in Jersey. In the case of EU sanctions, the Council of the European Union adopts Regulations that are binding on all Member States. In line with Jersey’s “good neighbour” policy, the Island implements such sanctions through the European Communities Legislation (Implementation) (Jersey) Law 1996.

60. The majority of sanctions prohibit general or specific trade and the facilitation of such trade, including the proliferation of weapons of mass destruction and activity-based financial prohibitions (the provision of technical assistance or training, financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use of prohibited items, materials, equipment, goods and technology). A number also place restrictions on the financial assets of specified individuals, entities, and government agencies. Occasionally, restrictions will be placed on the financial assets of all nationals or residents of a country.

61. The risk of handling the proceeds of prohibited trade is greatly enhanced where a relevant person maintains relationships with countries that are subject to international sanctions.


### 2.8 Predicate Offences

63. Jersey legislation applies the offence of money laundering to a wide range of predicate offences, including all the designated categories of offences that are listed in the FATF Recommendations. These are:

- Participation in an organised criminal group and racketeering;
- Terrorism, including terrorist financing;
- Trafficking in human beings and migrant smuggling;
- Sexual exploitation, including sexual exploitation of children;
- Illicit trafficking in drugs;
- Illicit arms trafficking;
- Illicit trafficking in stolen and other goods;
- Corruption and bribery;
- Fraud;
- Counterfeiting currency;
- Counterfeiting and piracy of products;
- Environmental crime;
- Murder, grievous bodily injury;
- Kidnapping, illegal restraint and hostage taking;
- Robbery or theft;
- Smuggling;
- Extortion;
- Forgery;
- Piracy; and
- Insider dealing and market manipulation.

64. See Appendix A for full details on the offences that may be committed under each of the categories listed above.

2.8.1 Trafficking in human beings and migrant smuggling

65. Trafficking takes place when someone is taken against their will, bought, sold and transported into slavery for such things as sexual exploitation, sweat shops, child brides, circuses, sacrificial worship, forced begging, sale of human organs, farm labour, or domestic service. Internationally, the problem is growing. Two to four million men, women and children are trafficked across borders and within their own countries every year.

66. Often, family members and friends deceive parents to release their children or sell them, selling them on to local gang-masters or serious organised international trafficking rings. Victims usually suffer repeated physical abuse, fear, torture and threats to families to break their spirits and turn them into saleable commodities. A person can be sold and trafficked many times.

67. Although trafficking and migrant smuggling itself may not be a significant problem in Jersey, relevant persons may handle the proceeds of such offences. To date, whilst no money laundering techniques have been identified which can be uniquely associated with these offences, some region-specific patterns are emerging. Reported cases, mainly in Europe, appear to show proceeds of criminal conduct being invested in banking and insurance products and in real estate and legal cash-based business activities.

68. The Crime (Transnational Organized Crime) (Jersey) Law 2008 (the “Transnational Organized Crime Law”) implements in Jersey parts of the UN Convention against Transnational Organised Crime. The Transnational Organized Crime Law contains the following key offences relating to trafficking:

- **Article 3** creates the offence of people smuggling. A person who commits such an offence is liable to 20 years imprisonment (Article 3(4)).

- **Article 4** creates the offence of people trafficking. A person who commits the offence is liable to 20 years imprisonment (Article 4(3)).

- Aggravating factors in respect of both of these offences are contained in **Article 5**.
69. Europol has issued a number of reports on trafficking, which can be found on its website:


### 2.8.2 Illicit arms trafficking

70. Following enactment of the Export Control Act 2002 (the “Export Control Act”) and subordinate legislation, the UK has in place a regime for controlling: the export and trade of military equipment and related goods; the transfer of military technology and software; and associated activities, such as providing technical assistance. Engaging in any of these activities is an offence in the UK, unless licensed by the Secretary of State.

71. Some areas of the UK provisions are already covered by Jersey law and some areas of the UK provisions not yet replicated in Jersey law, extend to British citizens anywhere in the world. Thus, Jersey resident British citizens engaged in the above activities may or may not be subject to Jersey law and may or may not be subject to UK law according to the exact nature of the activity.

72. The Export Control (Jersey) Law 200-, which mirrors the Export Control Act, has been adopted by the States but has yet to be brought into force.

73. Trade prohibition sanctions will also be relevant to the extent that they cover trafficking in military equipment. See 2.7.6 of this section.

### 2.8.3 Corruption and bribery

74. Corruption is an activity to which the international community is increasingly turning its attention. A number of high profile corruption scandals in recent years, e.g. President Marcos of the Philippines, President Bhutto of Pakistan, Nigeria’s General Abacha and General Augusto Pinochet of Chile have emphasised the need for a concerted effort to prevent corruption, including the prevention and detection of its facilitation through the handling of the property that it generates.

75. As with many fraud related offences, corruption is commonly and mistakenly regarded as distinct from other types of crime for money laundering purposes, which it is not. Actions arising from corruption, whether they occur in Jersey or overseas, are capable of predicating an offence of money laundering in Jersey where they satisfy the requirements of the definition of criminal conduct within the Proceeds of Crime Law.


77. The Corruption Law has a broad jurisdiction and applies to acts committed inside Jersey by any person, and outside Jersey where conducted by a UK national (a term that is defined in the Corruption Law to include any British citizen) resident in Jersey or by a Jersey company or Jersey limited liability partnership. Additionally, where an offence is committed by a body corporate, and is due to the consent or connivance of, or to be attributable to neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or a partner of the partnership, the individual shall be liable in the same manner as the body corporate or the partnership.

78. The Corruption Law contains the following key offences:

- **Article 5** makes it an offence for any person corruptly to solicit, receive or agree to receive, or give or promise to give, any advantage as an inducement or reward to a member, officer or employee of a public body in respect of any matter concerning that public body.
• **Article 6** makes it an offence for an agent to corruptly receive or give any advantage as an inducement or reward (or to show or not show favour or disfavour) in relation to the affairs or business of the agent's principal.

• **Article 7** makes it an offence for a public official to do or not do any act in relation to the official's employment for the purpose of corruptly obtaining any advantage.

79. It is worth noting that the term advantage is defined widely and covers both financial and non-financial advantages. Additionally, offences may be tried in Jersey where any of the acts alleged to have constituted the offence were committed in Jersey, and, where a UK national (a term that is defined in the Corruption Law to include any British citizen) resident in Jersey, a Jersey company or a Jersey limited liability partnership commits an act outside Jersey that would be an offence if committed in Jersey.

80. In addition, a relevant person should also be aware that actions connected with corruption may also contain elements that will satisfy other types of offence that are recognised under Jersey law, including the common law offence of theft, fraud or false accounting, and obtaining services by false pretences.

81. The risk of handling the proceeds of corruption or becoming engaged in an arrangement that is designed to facilitate corruption is greatly enhanced where the arrangement involves a politically exposed person (“PEP”). Guidance on the handling of a PEP relationship is provided in Part 1.

82. Relevant persons should exercise extreme caution when asked to structure services involving the receipt of emoluments or commission payments in respect of deals, followed by payment to a third party associated with the deal.

### 2.8.4 Fraud

83. Fraud, including fiscal offences (such as tax evasion) and exchange control violations, are commonly and mistakenly regarded as distinct from other types of crime for money laundering purposes. They are not. Any fraud related offence is capable of predating an offence of money laundering in Jersey where it satisfies the requirements of the definition of criminal conduct within the Proceeds of Crime Law. Deliberate false representations made with the intention and consequence of causing actual prejudice to a revenue authority and actual benefit to another may constitute common law fraud, which has a minimum sentence in Jersey of one year’s imprisonment.

84. Even in circumstances where conduct committed elsewhere constitutes a criminal offence which does not exist under Jersey law, e.g. exchange control violations, a relevant person should be aware that such conduct may contain elements that will satisfy other types of offence that are recognised under Jersey law, including fraud, obtaining goods or services by deception or false accounting.

85. A relevant person is not obliged to positively ascertain that property has not derived from criminal conduct or indeed that a customer has not or is not engaged in criminal conduct. For example, they are not obliged to ascertain whether a customer is paying all of the tax that he is due to pay in his home jurisdiction. That said, where there are circumstances that indicate that a customer may be or may have been engaged in potentially criminal conduct, businesses should make further enquiries of that customer.

### 2.9 PROSECUTIONS

86. There has been a number of successful money laundering prosecutions under the Proceeds of Crime Law (and Money Laundering Order) and Drug Trafficking Offences Law.

2.9.1 Attorney General vs. Caversham Fiduciary Services Ltd and Caversham Trustees Ltd and Nicholas Bell (“Caversham”) – 2006 (JLR 61)

88. The charges arose out of an incident in 2002, when one of Caversham’s directors was approached to set up a discretionary trust by a solicitor in England. The solicitor said that an attorney had been appointed on behalf of the ultimate client. The latter, who was a non-UK resident, and who had recently received funds from the sale of a sauna business, wished to hold them through an offshore trust. The solicitor sent through documents to identify the attorney, but not the ultimate client.

89. A few days later, £850,000 was sent from the solicitor’s account to Caversham. Two days later, the solicitor requested the trustee to pay £825,000 to four entities, none of which had any connection to the trust. The trust was established with the attorney as the sole beneficiary and, the next working day, the payments were made.

90. No identification measures were carried out in respect of the attorney’s underlying client and the defendants were charged with forming a business relationship without maintaining procedures in relation to identification, and failing to have satisfactory internal controls, both contrary to the Order issued under Article 37 of the Proceeds of Crime Law (at that time the Money Laundering (Jersey) Order 1999).

91. Both the company and one of the directors of the company were convicted. Those convictions were subsequently upheld on appeal in 2006.

2.9.2 Attorney General v Michel & Gallichan [2006] JCA 082B

93. A substantial investigation was conducted by the Attorney General between 2002 and 2005 into the business of Peter Michel, an accountant in practice in Jersey. This lead to the laying of an indictment containing ten counts of money laundering, including laundering the proceeds of tax evasion.

94. The defendants were charged with assisting another to retain the benefit of criminal conduct, contrary to Article 32(1)(a) of the Proceeds of Crime Law.

95. It was alleged that over a period of two years, the defendants had been concerned, with others, in an arrangement to facilitate the retention or control on behalf of various unspecified persons of funds which were the proceeds of criminal conduct committed overseas, and that they knew or suspected that the third parties to whom the proceeds belonged were or had been engaged in or had benefited from criminal conduct. The criminal conduct alleged included tax evasion.

96. The defendants were convicted on all counts, subsequently upheld on appeal.

2.9.3 Attorney General v Fagan [2005] JRC 031

97. The defendant was charged with assisting another to retain the benefit of criminal conduct, contrary to Article 32 of the Proceeds of Crime Law and acquisition, possession, or use of proceeds of criminal conduct contrary to Article 33 of the Proceeds of Crime Law.

98. Ms Fagan was the girlfriend of a man called Trevor Billingsley who had been stealing property from his employer and selling it to an auctioneer. This auctioneer paid for the items by cheque. On twelve occasions between 13 June 2002 and 23 April 2003 cheques were issued by the auctioneer in the name of M Fagin or M Fagan. Ms Fagan paid these cheques into her account - totalling £11,800.

99. The defendant was convicted.

100. A substantial investigation was carried out between 2001 and 2003 into the money laundering aspects of the drug trafficking conducted by Michael O’Brien.

101. Mr O’Brien was charged with two counts of transferring the proceeds of criminal conduct, contrary to Article 16A(1)(b) of the Drug Trafficking Offences Law. One count related to the deposit of the proceeds of Mr O’Brien’s drug trafficking into a number of clearing banks in Jersey in sums in excess of £1.6 million. The second count related to the payment of the proceeds of Mr O’Brien’s drug trafficking from a number of clearing banks in Jersey by Mr O’Brien to Michael Dunne, David Lloyd and Carol Lloyd by way of cheque in sums in excess of £1.6 million.

102. As a result, Mr O’Brien and four others were convicted in the Royal Court in 2003 of laundering the proceeds of drug trafficking.
3 REPORTING KNOWLEDGE AND SUSPICION

3.1 REPORTING KNOWLEDGE OR SUSPICION OF MONEY LAUNDERING AND TERRORIST FINANCING

1. A relevant person may avoid committing an offence under Articles 32 or 33 of the Proceeds of Crime Law where it becomes concerned in an act of money laundering - by making a report to the JFCU of such a contravention. Where the report is made before the contravention, then it is also necessary for the JFCU to consent to the act. Similar provisions apply under Articles 37 and 38 of the Drug Trafficking Offences Law and Article 22 of the Terrorism Law.

2. A relevant person commits an offence under Article 34D of the Proceeds of Crime Law, Article 40A of the Drug Trafficking Offences Law, and Article 23 of the Terrorism Law, where it has knowledge or suspicion that another person is carrying on money laundering, drug money laundering or terrorist financing activity, or has reasonable grounds for knowledge or suspicion, and it fails to report that knowledge or suspicion to the JFCU.

3. A relevant person commits an offence under Article 9(1) of the UN Terrorism Order where it knows or suspects that a customer is a person who commits, attempts to commit, participates, or facilitates terrorism or has committed an offence under Articles 4, 5, 6(7) or 8 of the UN Terrorism Order and it fails to make a report to the Chief Minister's Department.

4. A relevant person commits an offence under Article 10(1) of the UN Al-Qa’ida and Taliban Order where it knows or suspects that a customer is Usama bin Laden or a listed person, or has committed an offence under Articles 7, 8(9) or 12(2) of the UN Al-Qa’ida and Taliban Order and it fails to make a report to the Chief Minister’s Department.

5. The same provisions that apply to a relevant person also apply to any person that is an officer or employee of that relevant person.

3.2 TERRITORIAL CONSIDERATIONS

6. In the case of a relevant person that is a Jersey-based branch or office of a body that is incorporated outside Jersey, the reporting provisions set out at 3.1 apply whether or not a relevant person also reports (directly or through group) knowledge or suspicion to a financial intelligence unit outside Jersey. Where a report is made outside Jersey, care must be taken by a relevant person to ensure that it does not unwittingly commit a tipping off offence.

7. The reporting provisions set out at 3.1 are not limited to financial services business that is carried on in Jersey, and extends to financial services business that is carried on by a relevant person outside Jersey - for example through a permanent branch or office in another jurisdiction or through business trips to another jurisdiction.

8. Notwithstanding this, there will be circumstances where the connection that a person has to Jersey is considered to be too tenuous for a reporting provision to apply. For example, it may not be appropriate for a Jersey resident who carries on his business exclusively outside the Island and who forms reasonable grounds for suspecting that another person is involved in money laundering whilst conducting work outside Jersey to report that suspicion to the JFCU.

9. In such circumstances, it is likely that there will be a requirement to report knowledge or suspicion of money laundering and terrorist financing activity on a financial services business that is carried on outside Jersey to an overseas financial intelligence unit.

10. Where a relevant person carries on a financial services business in Jersey, but outsources aspects of its activities to another jurisdiction, whether to a group entity or to a third party, then the reporting provisions set out at 3.1 above apply equally to outsourced activities.
3.3 WHAT CONSTITUTES KNOWLEDGE OR SUSPICION?

11. Knowledge includes actual knowledge. Generally speaking, a person is also likely to be considered to have known something even if they did not have knowledge of that thing where they:

- Shut their mind to the obvious.
- Deliberately refrain from making inquiries or asking questions, on the basis that they do not want to know the results of the inquiries or the answers to the questions.
- Deliberately deter another person from making disclosures, the content of which they might not care to have.
- Have knowledge of circumstances which would indicate the facts to an honest and reasonable person.
- Have knowledge of circumstances which would put an honest and reasonable person on inquiry and fail to make the reasonable inquiries which such a person would have made.

12. For a person to have knowledge, he does not need to know the exact nature of the criminal activity underlying the money laundering, or that the funds themselves were definitely those arising from the criminal offence.

13. Suspicion is more than speculation but it falls short of proof or knowledge. Suspicion is personal and subjective but will generally be built on some objective foundation.

14. Whilst suspicion is not defined in existing legislation, English case law has provided further information concerning the expectations of the court concerning the meaning of suspicion. The Court of Appeal has directed, in the case of *R v Da Silva [2006] EWCA Crim 1654*, that suspicion is a possibility, which is more than fanciful, that the relevant facts exist, and that a vague feeling of unease would not suffice. The suspicion need not be "clear" nor "firmly grounded and targeted on specific facts", nor based upon "reasonable grounds". For example, if the acts of facilitating another person's retention or control of the proceeds of criminal conduct were done by a person who thought that there was a possibility, which was more than fanciful, that the other person was or had been engaged in or had benefited from criminal conduct, that first person would have committed a money laundering offence (*Article 31(1)* of the Proceeds of Crime Law). The meaning of suspicion detailed above was also confirmed by the Court of Appeal in the case of *K v NatWest [2006] EWCA Civ 1039*.

3.4 THE OBJECTIVE TEST OF KNOWLEDGE OR SUSPICION

15. *Articles 34 and 34D* of the Proceeds of Crime Law, *Articles 30 and 40A* of the Drug Trafficking Offences Law and *Articles 15 to 18* and *Article 23* of the Terrorism Law provide for an offence to be committed where there are reasonable grounds to know or suspect that property represents the proceeds of crime or terrorist property. That is, a person would commit an offence even if he did not know or suspect that a money laundering offence was being committed, if he had reasonable grounds for knowing or suspecting that it was. In the case of an obligation under *Article 34D* of the Proceeds of Crime Law, *Article 40A* of the Drug Trafficking Offences Law and *Article 23* of the Terrorism Law this means that, if another person in the same position would have been suspicious and made a report, a person who does not make a report may have committed an offence.

3.5 MAKING A REPORT

16. A suspicious activity report must be made as soon as it is reasonably practicable to do so once knowledge, suspicion or reasonable grounds for suspicion have been formulated. As such, where a report relates to a transaction, it must be made either before a transaction occurs, or afterwards, if knowledge or suspicion is formulated with the benefit of hindsight after a transaction occurs.
17. A report that is made to the JFCU should follow guidance that is published on the States of Jersey Police website. See: http://www.jersey.police.uk/pdf-files/SARGUIDELINES.pdf. A link to the guidance can also be found through the Commission’s website.

### 3.6 REFUSED BUSINESS AND TRANSACTIONS

18. Reporting must also cover situations where the business or transaction has not proceeded because the circumstances surrounding the application or proposal gave rise to knowledge, suspicion, or reasonable grounds for suspicion of money laundering or terrorist financing activity.

### 3.7 LIAISING WITH LAW ENFORCEMENT

#### 3.7.1 Contacting the JFCU

19. The reception point for disclosure of knowledge, suspicion, or reasonable grounds for knowledge or suspicion of money laundering or terrorist financing activity is the JFCU. The JFCU can be contacted:
   - by post, at PO Box 789, Police Headquarters, Rouge Bouillon, St Helier, Jersey JE4 8ZD;
   - by telephone, on 01534 612250; or
   - by facsimile, on 01534 870537.

20. Where a relevant person has knowledge or suspicion of terrorist financing, then a separate report must also be made under the UN Terrorism Order and UN Al-Qa’ida and Taliban Order to the Chief Minister’s Department.

#### 3.7.2 Consent to activity and acknowledgement of report by the JFCU

21. Where a suspicious activity report is made to avoid committing an offence under Articles 32 or 33 of the Proceeds of Crime Law, Articles 37 and 38 of the Drug Trafficking Offences Law, or Article 18 or 22 of the Terrorism Law, and the report is made before a suspected act (transaction or activity) takes place, JFCU consent must be obtained before the transaction or activity occurs.

22. The receipt of a suspicious activity report concerning an act (transaction or activity) that has already occurred in an established business relationship (another act) will be acknowledged by the JFCU, and in the absence of any instruction to the contrary from the JFCU, a relevant person will generally be provided with consent to maintain the customer relationship under normal commercial circumstances (referred to as consent to operate normally). However, receipt of such consent from the JFCU in these circumstances does not indicate that the knowledge or suspicion is with or without foundation, and future acts (transactions or activity) should continue to be monitored and reported, as appropriate.

#### 3.7.3 Current JFCU practice

23. In the vast majority of instances in which a suspicious activity report is made to the JFCU, a response to the issue of consent to process a transaction, continue an activity or continue with a relationship will be provided by the JFCU within seven days of receipt of a report. Whilst this is what generally occurs in practice (indeed, the JFCU responds within two working days in the majority of cases), it should be noted that the JFCU is not obligated to provide consent within a particular time frame, or at all.

24. Consent may be delayed where information is required by the JFCU from an overseas financial intelligence unit. Consent may be withheld where the report lacks sufficient detail to allow the JFCU to form a view on consent.
25. Where a relevant person is refused consent it should contact the JFCU for guidance on what, if any, information can be provided to the customer. It should be noted that the JFCU is not obligated to provide such guidance. In circumstances where consent is withheld, the JFCU may expressly allow the relevant person to notify the customer of the fact that they are the subject of a police investigation without the risk of committing a tipping off offence. Such notification will not be sanctioned by the JFCU where it might prejudice a domestic or overseas investigation.

26. Where a relevant person is seeking to terminate a relationship, the JFCU may be able to provide advice on whether this will impact on any current investigation. The decision to terminate a relationship, however, remains with the relevant person.

3.7.4 Analysis, investigation, and dissemination

27. Following the receipt of a disclosure, the JFCU will make initial enquiries and may request additional information to assist with its analysis of the report - relying on Article 21 of the Money Laundering Order. Following analysis of this information, reports are allocated, as appropriate, to financial investigation officers for investigation.

28. Where additional information is required from a reporting institution for such an investigation, it will generally be obtained pursuant to a production order, customer information order, or customer monitoring order made by the Bailiff under the Proceeds of Crime Law, Drug Trafficking Offences Law, Terrorism Law, or notice issued by the Attorney General under the Investigation of Fraud (Jersey) Law 1991 (the "Investigation of Fraud Law") or the Criminal Justice (International Co-operation) (Jersey) Law 2001 (the "International Co-operation Law"). It is a criminal offence to fail to comply with the terms of any order or notice.

29. Information from reports submitted to the JFCU may be disseminated by the JFCU to other financial intelligence units and other competent authorities, as appropriate.

30. During the course of an investigation, a relevant person may be served with an order designed to restrain particular funds or property pending the outcome of an investigation. It should be noted that the restraint order may not apply to all funds or assets involved within a particular business relationship and a relevant person should consider what, if any, property may be utilised subject to having obtained the appropriate consent from the JFCU.

31. Upon the conviction of a defendant, a court may order the confiscation of criminal proceeds or the confiscation of assets to a value representing the benefit of criminal conduct, which may require the realisation of legitimately obtained assets. A relevant person may be served with a confiscation order in relation to any funds or property belonging to that defendant. For example, if a person is found to have benefited from drug dealing to a value of £100,000, then the court may order the confiscation of any assets belonging to that person to a value of £100,000.

32. Confiscation of the proceeds of criminal conduct is becoming common place within many jurisdictions, and legislation in place in Jersey provides a mechanism by which overseas criminal confiscation orders may be recognised.

33. Property may also be forfeited in Jersey utilising civil proceedings under the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007.

34. From time to time, with a view to obtaining additional intelligence, the JFCU will issue general liaison notices to all relevant persons, or to a particular category of business carried on by relevant persons. The JFCU will ensure that the requests contained within such notices are proportionate and reasonable in the circumstances. Relevant persons are requested to respond with any relevant information as soon as is reasonably practicable.

3.7.5 Feedback from the JFCU

35. Because a significant proportion of suspicious activity reports received by the JFCU relate to the accounts or transactions of non-Jersey residents and so are disseminated to overseas intelligence agencies, it may not be possible for the JFCU to provide regular feedback on individual disclosures. The JFCU is currently looking to address this point.
36. However, on a regular basis, the JFCU provides statistics, trends and advice to enhance the quality of disclosures. In addition the States of Jersey Police Annual Report contains some information on disclosures, prosecutions and confiscations.

37. Based in large part on reports that have been made to the JFCU, the Law Officers’ Department, JFCU and Commission have jointly published typologies that are relevant to Jersey. The typologies can be found on the Commission’s website:

www.jerseyfsc.org/anti-money_laundering/typologies.asp.
# APPENDIX A: LIST OF DESIGNATED CATEGORIES OF OFFENCES

<table>
<thead>
<tr>
<th>Predicate Offence</th>
<th>Law</th>
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<tbody>
<tr>
<td>Terrorism, including terrorism financing</td>
<td>• Articles 12-18, 50, 51 of the Terrorism (Jersey) Law 2002.</td>
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<tr>
<td>Trafficking in human beings and migrant smuggling</td>
<td>• Articles 3-5 of the Crime (Transnational Organized Crime) (Jersey) Law 2008.</td>
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| Sexual exploitation, including sexual exploitation of children                    | • Customary Law offences *(Attorney General vs. Benyoucef, Attorney General vs. Godwin, Attorney General vs. Hamon)*.  
• Articles 2 and 4 of the Loi (1895) Modifiant le Droit Criminel.  
• Articles 2-6 of the Sexual Offences (Jersey) Law 2007.  
• Article 2 of the Protection of Children (Jersey) Law 1994. |
| Illicit trafficking in drugs                                                      | • Articles 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 19, 21 of the Misuse of Drugs (Jersey) Law 1999.  
• Article 61 of the Customs and Excise (Jersey) Law 1999. |
| Illicit arms trafficking                                                          | • Paragraph 5 - Schedule 2 and Paragraph 5 - Schedule 3 of the Customs and Excise (Import and Export Control) (Jersey) Order 2006.  
• Articles 2, 19, 23, 27, 32, 33 of the Firearms (Jersey) Law 2000. |
| Illicit trafficking in stolen and other goods                                     | • Customary Law Offences *(Attorney General vs. Bailey, Attorney General vs. Munks)*. |
| Corruption and bribery                                                           | • Articles 5-7 of the Corruption (Jersey) Law 2006.                  |
| Fraud                                                                            | • Customary Law Offences *(Attorney General vs. Morton, Attorney General vs. Barette, Attorney General vs. Richards)*.  
• Article 2 of the Investors (Prevention of Fraud) (Jersey) Law 1967. |
| Counterfeiting currency                                                           | • Articles 2, 4, 6, 11 of the Currency Offences (Jersey) Law 1952.   |
| Counterfeiting and piracy of products                                            | • Article 25 of the Trade Marks (Jersey) Law 2000.                   
• Article 5 of the Merchandise Marks (Jersey) Law 1958.                           
| Environmental crime                                                              | • Article 17 of the Water Pollution (Jersey) Law 2000.                
• Articles 90 and 92 of the Shipping (Jersey) Law 2002.                           
• Article 23 of the Waste Management (Jersey) Law 2005.                           |
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<th>Predicate Offence</th>
<th>Law</th>
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<tr>
<td>Kidnapping, illegal restraining and hostage-taking</td>
<td>• Customary law offences (Attorney General vs. O’Shea, Attorney General vs. Myles and O’Shea).</td>
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<td></td>
<td>• Article 1 of the Taking of Hostages (Jersey) Order 1982.</td>
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<tr>
<td>Robbery or theft</td>
<td>• Customary law offences (Attorney General vs. Le Feuvre and Matthews, Attorney General vs. Rodrigues, Attorney General vs. Marrett &amp; Kilgour).</td>
</tr>
<tr>
<td>Smuggling</td>
<td>• Articles 42, 45, 46, 61 of the Customs and Excise (Jersey) Law 1999.</td>
</tr>
<tr>
<td>Forgery</td>
<td>• Customary law offences (Attorney General vs. Tadier, Attorney General vs. Aubert, Attorney General vs. Ahier).</td>
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