

**POSITION PAPER
NO. 1 2008**

**AMENDMENTS TO THE
MONEY LAUNDERING
(JERSEY) ORDER 2008**

**Money Laundering (Amendment No. 2) (Jersey) Order
200-**

POSITION PAPER

If you require any assistance or clarification, wish to discuss any aspect of this paper, or have any observations please contact:

Andrew Le Brun
Director, International and Policy,
Jersey Financial Services Commission,
PO Box 267,
14-18 Castle Street,
St Helier,
Jersey,
JE4 8TP

Telephone: +44 (0) 1534 822065
Facsimile: +44 (0) 1534 822001
Email: a.lebrun@jerseyfsc.org

Glossary of terms

Amending Order	means the Money Laundering (Amendment No. 2) (Jersey) Order 200-
Commission	means the Jersey Financial Services Commission
Commission Law	means the Financial Services Commission (Jersey) Law 1998
Drug Trafficking Offences Law	means the Drug Trafficking Offences (Jersey) Law 1988
FATF	means the Financial Action Task Force
FATF Recommendations	means the Forty Recommendations and Nine Special Recommendations published by the FATF
Guernsey Regulations	means the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations 2007
Handbook	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Businesses
IMF	means the International Monetary Fund
JFCU	means the Joint Financial Crimes Unit
Minister	means the Minister for Treasury and Resources
MLCO	means a money laundering compliance officer
Money Laundering Order	means the Money Laundering (Jersey) Order 2008
MLRO	means a money laundering reporting officer
PEP	means a politically exposed person
Proceeds of Crime Law	means the Proceeds of Crime (Jersey) Law 1999
Regulatory laws	means the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, and the Financial Services (Jersey) Law 1998
Relevant person	means a person carrying on a financial services business in or from within Jersey, or a Jersey company carrying on a financial services business in any part of the world

Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Third Money Laundering Directive	means Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
UK Regulations	means the Money Laundering Regulations 2007

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1 EXECUTIVE SUMMARY

1.1 Overview

- 1.1.1 Later this month, the Island's framework to counter money laundering and the financing of terrorism will be subject to a review by the International Monetary Fund (the "IMF"). The IMF will assess compliance with standards that are set by the Financial Action Task Force (the "FATF") and which are referred to as the Forty Recommendations and Nine Special Recommendations (the "FATF Recommendations").
- 1.1.2 In preparation for the forthcoming assessment, the Jersey Financial Services Commission (the "Commission") has been consulting since June 2008 on some amendments to the Money Laundering (Jersey) Order 2008 (the "Money Laundering Order") - which are set out in the Money Laundering (Amendment No. 2) (Jersey) Order 200- (the "Amending Order"), which is attached to this paper.
- 1.1.3 The Amending Order reflects the extended scope of what an Order that is issued under Article 37 of the Proceeds of Crime (Jersey) Law 1999 (the "Proceeds of Crime Law") can do - following the change made to that article by the Proceeds of Crime (Amendment) (Jersey) Law 2008, which was registered in the Royal Court on 28 March 2008. Article 37 of the Proceeds of Crime Law now allows the Minister for Treasury & Resources (the "Minister") to require measures to be taken to prevent and detect money laundering and terrorist financing and to allow certain information to be shared with group companies (or entities that are part of a looser network).
- 1.1.4 The Amending Order also promotes a number of existing regulatory requirements to statutory requirements, since there is still some debate internationally as to whether regulatory requirements are considered to be "other enforceable means". Such an approach also has the benefit of applying the FATF Recommendations to all "financial institutions" and "designated non-financial businesses and professions" ("DNFBPs") (terms which are used in the FATF Recommendations), and not just those covered by regulatory requirements set under Article 22 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the "Supervisory Bodies Law") (though such requirements do cover most financial institutions and DNFBPs).
- 1.1.5 The Amending Order is also needed to:
- 1.1.5.1 Reflect the introduction into the Proceeds of Crime Law and Drug Trafficking Offences (Jersey) Law 1988 (the "Drug Trafficking Offences Law") of the so called "direct" reporting obligation.
- 1.1.5.2 Address a number of matters that have been highlighted since the Money Laundering Order came into force in February 2008 by Industry and through completion of a detailed self assessment questionnaire that has been prepared in advance of the IMF assessment.
- 1.1.6 In addition, the opportunity has been taken to address a small number of matters that are not features of the FATF Recommendations, but which are covered in Directive 2005/06/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

(the “**Third Money Laundering Directive**”) (which is implemented in the United Kingdom through the Money Laundering Regulations 2007 (the “**UK Regulations**”).

- 1.1.7 The Amending Order has been under discussion with the Commission’s Steering Group for the Prevention and Detection of Money Laundering and Terrorist Financing since June. The proposals have also been presented to over 300 practitioners in a series of five seminars held at St Paul’s Centre between 9 and 11 September 2008.

1.2 Scope and Format of Paper

- 1.2.1 The amendments that are set out in the Amending Order will affect all persons carrying on a financial services business and which are:
- 1.2.1.1 carrying on that business in or from within Jersey; or
 - 1.2.1.2 if a Jersey company, carrying on that business in any part of the world.
- 1.2.2 Such a person is referred to in the Money Laundering Order and in this paper as a “**relevant person**”. Schedule 2 of the Proceeds of Crime Law sets out what is meant by the term “financial services business”, and now includes the activities of lawyers, accountants, estate agents, and high value dealers.
- 1.2.3 Section 3 of the paper considers a number of amendments that are made by the Amending Order and which have an effect on more than one article. Section 3 then highlights the key changes that are to be made to the Money Laundering Order – article by article.
- 1.2.4 In line with the approach that is followed in the Proceeds of Crime Law and Money Laundering Order, references to “money laundering” in this paper are to be taken to include references to the financing of terrorism.
- 1.2.5 Where appropriate, references are made in this paper to provisions that apply in the UK through the UK Regulations and in Guernsey through the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations 2007 (the “**Guernsey Regulations**”).
- 1.2.6 References in Section 3 to articles in the Money Laundering Order are to articles as they are amended by the Amending Order – except where stated otherwise.

1.3 Timetable

- 1.3.1 The draft of the Amending Order that is attached to this paper is substantially in the form that it will be presented to the Minister for adoption, except that it does not include the reporting form that is to be presented as a schedule to the Money Laundering Order.
- 1.3.2 It is the Commission’s intention to request the Minister to bring the Amending Order into force on 7 November 2008.

2 THE COMMISSION

2.1 Overview

2.1.1 The Commission is a statutory body corporate established under the Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”). It is responsible for the supervision and development of financial services provided in or from within Jersey.

2.2 Commission’s functions

2.2.1 The Commission Law prescribes that the Commission shall be responsible for:

- 2.2.1.1 the supervision and development of financial services provided in or from within Jersey;
- 2.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- 2.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- 2.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –
 - as are required or authorised by or under any enactment, or
 - as the States may, by Regulations, transfer; and
- 2.2.1.5 such other functions as are conferred on the Commission by any other law or enactment.

2.3 Guiding principles

2.3.1 The Commission’s guiding principles require it to have particular regard to:

- 2.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of financial service providers;
- 2.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- 2.3.1.3 the best economic interests of the Island; and
- 2.3.1.4 the need to counter financial crime in Jersey and elsewhere.

3 AMENDMENTS TO THE MONEY LAUNDERING ORDER

3.1 General changes

- 3.1.1 References to “customer due diligence procedures”, “identification procedures” and “enhanced customer due diligence procedures” have been amended throughout the Money Laundering Order to “customer due diligence measures”, “identification measures”, and “enhanced customer due diligence measures”.
- 3.1.2 This is intended to make it clear that - in line with FATF Recommendation 5 - absolute obligations are set in the Money Laundering Order to conduct customer due diligence. This is already the effect of the Money Laundering Order, but it had not been possible until now to make reference to the term “measures”.
- 3.1.3 For a similar reason, references to “ongoing identification procedures” have been amended to “ongoing monitoring” which much better explains the substance of existing provisions, but which could not be described as such until now.
- 3.1.4 Provision is also made for the possibility of a body other than the Commission to be designated by the Minister for Economic Development under the Supervisory Bodies Law. In particular:
 - 3.1.4.1 Article 10A(7) of the Money Laundering Order provides for certain information to be disclosed to a body other than the Commission. Information is to be provided where a branch or subsidiary is not able to apply measures that are at least equivalent to those set out in the Money Laundering Order (as a result of the law of the country or territory in which financial services business is carried on).
 - 3.1.4.2 Article 23 of the Money Laundering Order sets out the obligations to report to the Joint Financial Crimes Unit (the “JFCU”) where a body obtains information under the Supervisory Bodies Law and is of the opinion that the information indicates that any person has or may have been engaged in money laundering. Similar provisions apply to any person that is appointed under the Supervisory Bodies Law. These obligations mirror those that apply to the Commission and persons that are appointed under the Commission Law, the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, and the Financial Services (Jersey) Law 1998 (collectively referred to as the “regulatory laws”).

3.2 Article 1 - definitions

- 3.2.1 Article 1 of the Money Laundering Order defines a number of terms that are used throughout the Money Laundering Order.

- 3.2.2 In particular, the definition of “regulated business” is updated to reflect the introduction of certificate holders in the Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008.

3.3 Article 2 – beneficial ownership and control

- 3.3.1 Article 2 of the Money Laundering Order sets out what is to be understood by the term “beneficial ownership and control”.
- 3.3.2 Article 2(3) of the Money Laundering Order is amended to provide that an individual is not to be treated as a beneficial owner of a person that is a body corporate where that body has securities which are *listed* on a regulated market. Currently the reference is to a company which has stocks or shares that are *admitted to trading* on a regulated market.
- 3.3.3 The change will bring Article 2 of the Money Laundering Order into line with the concession that is available under the UK Regulations.

3.4 Article 3 – meaning of “customer due diligence” measures

- 3.4.1 Article 3 of the Money Laundering Order sets out the customer due diligence measures that are to be applied under Article 13 of the Money Laundering Order.
- 3.4.2 In the case of a customer that is not an individual, Article 3(2) of the Money Laundering Order is amended to provide for customer due diligence measures to also extend to verifying that a person purporting to act on behalf of a customer has authority to act, and determining that the customer is authorised to enter into a business relationship or one-off transaction.
- 3.4.3 The change, which is in line with FATF Recommendation 5, will do no more than to reflect current practice.
- 3.4.4 Article 3(3) of the Money Laundering Order is amended to provide for ongoing monitoring to include scrutiny, where necessary, of the source of funds for a particular transaction in a business relationship. This change is in line with existing provisions in the UK Regulations.
- 3.4.5 In line with existing provisions in the UK Regulations, Article 3(4) of the Money Laundering Order is amended to provide for evidence that is obtained to verify a person’s identity to be drawn from documents, data or information from a reliable and independent source. Again, this change, which is in line with FATF Recommendation 5, will do no more than to reflect current practice.

3.5 Articles 7 to 9 - officers

- 3.5.1 Articles 7 to 9 of the Money Laundering Order deal with the appointment of a money laundering compliance officer (“MLCO”), money laundering reporting officer (“MLRO”), and (if appropriate) deputy MLRO.
- 3.5.2 Articles 7 to 9 of the Money Laundering Order are amended so that a person that is appointed must have an appropriate level of seniority and have access to all necessary

records. In the case of the MLCO and MLRO, this is in line with regulatory requirements that are set out in Sections 2.5 and 2.6 of the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the “**Handbook**”) and also FATF Recommendation 15.

- 3.5.3 Article 7(3) of the Money Laundering Order is also amended to clarify that a MLCO’s function includes monitoring whether any relevant regulatory requirements that are set under Article 22 of the Supervisory Bodies Law are complied with. Requirements are set in the Handbook and other handbooks that have been published (so far) for the accounting sector and for estate agents and high value dealers.
- 3.5.4 Articles 7(10) and 8(8) of the Money Laundering Order are amended to confirm that a person that is registered under one of the regulatory laws need not notify the Commission of the appointment or termination of appointment of a MLCO or MLRO where it has already notified the Commission under one or more of the regulatory laws.

3.6 Article 10A – business carried on outside Jersey

- 3.6.1 This new article explains the application of the Money Laundering Order to branches and subsidiaries of relevant persons, and makes separate provision for relevant persons that are Jersey companies, and relevant persons that are not Jersey companies. Article 10A of the Money Laundering Order replaces Article 11(6) and (7) (which is deleted).
- 3.6.2 In the case of a relevant person that is a Jersey company and which carries on a financial services business outside Jersey, it must apply the Money Laundering Order to the financial services business that it carries on outside Jersey. In the case of a Jersey company that carries on a financial services business outside Jersey through a subsidiary, then the requirement is for that Jersey company to ensure that its subsidiary applies measures that are *at least equivalent* to those set out in the Money Laundering Order.
- 3.6.3 In the case of a relevant person that is not a Jersey company, then the requirement is to apply measures that are *at least equivalent* to the requirements of the Money Laundering Order in each place of business outside Jersey that is under the control of that relevant person and which carries on a financial services business. In the case of a subsidiary, the requirement is for a relevant person to ensure that its subsidiary applies measures that are *at least equivalent* to those set out in the Money Laundering Order.
- 3.6.4 Article 10A of the Money Laundering Order is intended to make the application of the Money Laundering Order much clearer to Jersey companies that carry on a financial services business outside Jersey. Currently, the requirements that are set out in the Money Laundering Order apply to any business that is carried on by a relevant person that is a Jersey company (wherever that business is carried on), but Article 11(6) and (7) of the Money Laundering Order suggest that only customer due diligence, record-keeping, and reporting requirements need be applied in branches and subsidiaries. There is, therefore, some conflict between existing provisions.
- 3.6.5 Article 10A of the Money Laundering Order also amends existing Article 11(6) and (7) so that it is possible to apply measures that are *at least equivalent* to the requirements of the Money Laundering Order, rather than the Money Laundering Order itself (except in the case of a relevant person that is a Jersey company and which carries on a financial services business outside Jersey). However, the measures that are to be applied are all of the measures set out in the Money Laundering Order, rather than just customer due

diligence, record-keeping and reporting requirements, as is currently the case. This is in line with FATF Recommendation 22 and the UK Regulations.

- 3.6.6 In the case where business is carried on outside Jersey and where the requirements of the host jurisdiction are more stringent than those set out in the Money Laundering Order, then Article 10A(10) of the Money Laundering Order provides for those more stringent obligations to be applied. This is in line with FATF Recommendation 22.
- 3.6.7 However, the provisions that are set out in Article 10A of the Money Laundering Order do not apply to financial services business that is carried on outside Jersey by lawyers, accountants, estate agents, and high value dealers where that business is one that is described in Paragraphs 1 to 5 of Part B of Schedule 2 of the Proceeds of Crime Law. Nor does the obligation in Article 11(8) of the Money Laundering Order to communicate policies and procedures that are maintained under Article 11 apply to this group of activities. This is in line with the FATF Recommendations and UK Regulations.

3.7 Article 11 – policies, procedures and training to prevent and detect money laundering

- 3.7.1 Article 11(1) of the Money Laundering Order sets out the policies and procedures that must be applied by a relevant person, and is amended to provide for a relevant person to maintain policies and procedures that cover screening of employees and also risk assessment and management. As a result, the more general obligation to have “such other procedures of internal control and communication as may be appropriate” is deleted. These requirements are already features of Sections 2 and 7 of the Handbook.
- 3.7.2 The policies and procedures that are now set out in Article 11(1) of the Money Laundering Order are in line with those in the UK Regulations.
- 3.7.3 The construction of Article 11(3) of the Money Laundering Order is also clarified. Policies and procedures must be in place to:
- 3.7.3.1 identify and scrutinise certain transactions and activities;
 - 3.7.3.2 determine certain matters; and
 - 3.7.3.3 assess the risk of money laundering occurring in circumstances where identification measures are completed *after* a business relationship has been established.
- 3.7.4 Article 11(3A) of the Money Laundering Order provides that scrutiny is to include scrutinising the background and purpose of transactions and activities, in addition to the measures that are required under Article 13 of the Money Laundering Order.
- 3.7.5 Article 11(3) of the Money Laundering Order no longer provides for policies and procedures to include the scrutiny of business relationships and transactions that are connected with countries that do not apply the FATF Recommendations or persons that have been listed as being involved with terrorist activities. This is because relationships and transactions that are connected with countries that do not apply the FATF Recommendations are to be covered by Article 15 of the Money Laundering Order (enhanced customer due diligence) and the measures that are to be applied to persons

that have been listed are set out in the Terrorism (United Nations Measures) (Channel Islands) Order 2001 and Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002.

- 3.7.6 Instead, Article 11(3) of the Money Laundering Order provides for policies and procedures to be applied to determining whether relationships and transactions are conducted with persons connected to countries that do not apply the FATF Recommendations or persons that have been listed as being involved with terrorist activities.
- 3.7.7 The application of policies and procedures to politically exposed persons (“PEP”) is also amended so that, in addition to determining whether a prospective customer or customer is a PEP, policies and procedures will be used to determine whether or not a beneficial owner or controller of a customer, third party for which a customer acts, or person acting or purporting to act on behalf of a customer is a PEP. This is in line with FATF Recommendation 6 and similar to the approach taken in the Guernsey Regulations.
- 3.7.8 Article 11(9) of the Money Laundering Order is amended to provide for employees to be made aware of regulatory requirements that are set under Article 22 of the Supervisory Bodies Law and which are set out in the Handbook and other handbooks.
- 3.7.9 In line with FATF Recommendation 15, Article 11(10A) of the Money Laundering Order introduces a requirement for training to include the provision of information on current money laundering techniques, methods, and trends. This is in line with regulatory requirements that are set out in Section 7.6 of the Handbook.

3.8 Article 13 – application and timing of customer due diligence

- 3.8.1 Article 13 of the Money Laundering Order sets out when customer due diligence is to be applied.
- 3.8.2 Article 13(3)(b) of the Money Laundering Order is amended so that the application of ongoing monitoring to existing customers is brought into line with monitoring that is required for relationships that are established under the Money Laundering Order.
- 3.8.3 An existing customer is a customer with whom a business relationship had been formed before the Money Laundering Order came into force.

3.9 Article 15 – enhanced customer due diligence

- 3.9.1 Article 15 of the Money Laundering Order provides for enhanced due diligence to be applied in certain circumstances. Article 15(3A) of the Money Laundering Order adds one further case in which enhanced measures must be applied: where a relevant person has, or proposes to have, a business relationship with, or proposes to carry out a one-off transaction with, a person connected with a country that does not apply the FATF Recommendations.
- 3.9.2 Such a provision is already a feature of the Guernsey Regulations and is in line with FATF Recommendation 21.

- 3.9.3 Article 15 of the Money Laundering Order is also amended so that it sets out the enhanced measures that are to be applied where a prospective customer or a customer is a bank (to which “correspondent banking” services are provided) or PEP. This is in line with the approach that is followed in the UK Regulations.
- 3.9.4 The measures that are to be applied to correspondent banks are set out at Article 15(4B) of the Money Laundering Order and are in line with requirements that are set out in the correspondent banking section of the Handbook, except that, in addition, a relevant person must:
- 3.9.4.1 consider whether a correspondent bank has been subject to any money laundering investigation or regulatory action when determining its reputation; and
 - 3.9.4.2 determine whether the systems and controls in place at the correspondent bank to combat money laundering are effective (having assessed those systems and controls – which is an existing requirement).
- 3.9.5 The measures that are to be applied to relationships involving an individual that is a PEP are set out in Article 15(5A) of the Money Laundering Order. In line with the amendment to Article 11(3)(c) of the Money Laundering Order, enhanced measures are also to be applied to any beneficial owner or controller of a customer, third party for which a customer acts, or person acting or purporting to act on behalf of a customer that is a PEP. These requirements apply to prospective and ongoing relationships and are in line with FATF Recommendation 6.
- 3.9.6 Article 15 of the Money Laundering Order also includes definitions for what is meant by source of wealth and source of funds. These are taken from Section 3.3.3 of the Handbook.

3.10 Articles 16 and 19 – reliance on introducers and intermediaries

- 3.10.1 Article 16 of the Money Laundering Order sets out the circumstances in which it may be possible to place reliance on an “intermediary” or “introducer” to have completed aspects of the customer due diligence measures that must be applied under Article 13 of the Money Laundering Order.
- 3.10.2 In order to place reliance, one condition is that an intermediary or introducer provides a “written assurance” that covers certain matters, and Article 16(4)(b) of the Money Laundering Order is amended so that it is a requirement for such an assurance to provide confirmation that evidence of the identity of a person that has been collected by the intermediary or introducer will be made available to a relevant person *without delay*. This is in line with FATF Recommendation 9.
- 3.10.3 In order to support any assurance that is provided under Article 16 of the Money Laundering Order by an intermediary or introducer that is a relevant person, Article 19(5) of the Money Laundering Order provides that the intermediary or introducer *must* provide a copy of the evidence of identity that is covered by the assurance - and commits an offence where it does not do so. This is in line with a similar provision in the UK Regulations.

3.11 Article 18 – exceptions from customer due diligence measures

- 3.11.1 Article 18 of the Money Laundering Order sets out cases in which identification measures (or certain parts of identification measures) need not be applied.
- 3.11.2 The application of Cases A (where a customer is a public authority) and B (dealing with pension, superannuation or similar schemes) are revised in line with equivalent provisions in the UK Regulations.
- 3.11.3 Article 18(6A) of the Money Laundering Order introduces one further case – that is where a customer is a body corporate the securities of which are listed on a regulated market, where the identification measures that are set out in Article 13 of the Money Laundering Order need not be applied. This is in line with the UK Regulations.
- 3.11.4 Article 18(9) of the Money Laundering Order is amended so that the exemptions that are listed in Article 18 of the Money Laundering Order may not be used in any case in which money laundering is suspected or where a relevant person has determined that there is a higher risk of money laundering.

3.12 Article 21 – internal reporting procedures and requirements

- 3.12.1 Article 21 of the Money Laundering Order is amended to require internal reporting procedures to provide for:
 - 3.12.1.1 A report that is made to the JFCU to be made *as soon as is practicable* in the format that is set out in the Schedule to the Money Laundering Order. The Schedule will be based substantially on the form that is currently used for reporting to the JFCU.
 - 3.12.1.2 The MLRO or deputy MLRO to provide the JFCU with such additional information relating to a disclosure that is made as the JFCU may reasonably request (subject to safeguards that deal with legal professional privilege).
- 3.12.2 In addition to this procedural requirement, Article 21(2), (3) and (4) of the Money Laundering Order requires a MLRO or deputy MLRO to make a report in line with the Schedule to the Money Laundering Order and to provide such additional information that relates to a disclosure that is made as the JFCU may reasonably request (again subject to safeguards that deal with legal professional privilege). Where a MLRO or deputy MLRO fails to comply, then an offence is committed by a relevant person.
- 3.12.3 The Terrorism and Crime (Bailiwick of Guernsey) Regulations 2007 also provide for a report to be made in accordance with a set reporting format.
- 3.12.4 Provision for additional information to be made available to the JFCU is in line with FATF Recommendation 26, and is a feature of the UK's Proceeds of Crime Act 2002 and Terrorism and Crime (Bailiwick of Guernsey) Regulations 2007 - though in both cases, a power is provided to *collect* this additional intelligence rather than a requirement placed on a relevant person to cooperate.

3.12.5 Article 21 of the Money Laundering Order is also amended to clarify that, where another law provides for a report of knowledge or suspicion of money laundering to be made, the report is to be made to the deputy MLRO or MLRO.

3.13 Article 22A - disclosure

3.13.1 This article *permits* (but does not require) a relevant person to disclose information to any person or institution with whom it shares common ownership, management or compliance control - but only where such disclosure is appropriate for the purpose of preventing and detecting money laundering.

3.13.2 The information that can be passed on is set out in Article 22A of the Money Laundering Order, and includes information that is included in a suspicious activity report that is made to the JFCU.

3.13.3 Similar provisions are found in the Third Money Laundering Directive.

3.14 Article 23A - shell banks

3.14.1 In line with FATF Recommendation 18, Article 23A of the Money Laundering Order makes it an offence to provide services, directly or indirectly, to a “shell bank” (a term that is defined in Article 23A). A similar provision is made in the UK Regulations.

3.14.2 An identical prohibition is already set out in the section of the Handbook that covers correspondent banking.

3.15 Article 23B - anonymous accounts

3.15.1 Article 23B of the Money Laundering Order makes it an offence to set up an anonymous account or an account in a name that a relevant person knows, or has reasonable cause to suspect, is fictitious. This is in line with FATF Recommendation 5.

3.15.2 What is meant by “fictitious” will be covered in guidance. For example, consultation has highlighted that it is quite common in some countries for individuals to be known by a name other than that given to them at birth.

3.15.3 A similar provision is included in the UK Regulations and Guernsey Regulations.

3.16 Article 23C - countermeasures

3.16.1 Article 23C of the Money Laundering Order allows the Minister to direct any relevant person to do, or not to do, certain things with a customer who is situated or incorporated in a country or territory that the FATF has applied countermeasures to. This is in line with FATF Recommendation 21. In the UK, Her Majesty’s Treasury has a similar power to direct under the UK Regulations.

APPENDIX A

Money Laundering (Amendment No. 2) (Jersey) Order 200-



Jersey

MONEY LAUNDERING (AMENDMENT No. 2) (JERSEY) ORDER 200-

Explanatory Note

This Order amends the Money Laundering (Jersey) Order 2008 (the “principal Order”). Many of the changes relate to, and are consequential upon, new terminology introduced by this Order concerning the anti-money laundering requirements with which a person carrying on a financial services business must comply under the principal Order. “Financial services businesses” are the businesses set out in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999. Whereas the principal Order requires such persons to have specified “procedures” in place, this Order sets out “measures” that such persons are required to take. Most of the measures are substantially in the principal Order however this Order broadens and clarifies the circumstances in which such measures must be taken. In particular, such measures must be designed not only to prevent money laundering but also to detect it.

Article 1 is an interpretation provision.

Article 2 amends Article 1 of the principal Order by inserting new definitions, substituting existing ones and deleting a definition.

Article 3 amends the principal Order by substituting for the phrases “customer due diligence procedures”, “identification procedures”, and “enhanced customer due diligence procedures” similar phrases that use the word “measures” rather than “procedures”. The Article also substitutes for the phrase “on-going identification procedures” the phrase “on-going monitoring”.

Article 4 amends Article 2 of the principal Order (definition of “beneficial ownership and control”) to refer to listed securities rather than traded stocks and shares.

Article 5 amends Article 3 of the principal Order so as to tighten and clarify the measures comprised in “customer due diligence measures”.

Article 6 amends Article 7 of the principal Order relating to the appointment of the compliance officer. The person making the appointment must ensure that the officer is sufficiently senior and has access to the records needed for his or her functions.

Article 7 amends Article 8 of the principal Order and *Article 8* amends Article 9 of the principal Order to make similar changes to those made by Article 6 in respect of the appointment of the reporting officer and designated officer respectively.

Article 9 inserts a new **Article 10A** in the principal Order. Article 10A sets out requirements in respect of financial services business carried on outside Jersey. It requires a body incorporated in Jersey (“Jersey body corporate”) or a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997 (“Jersey limited liability partnership”) to ensure that any branch carrying on such a business complies with the Order and that any subsidiary applies measures that are at least equivalent to the requirements of the principal Order in respect of any such business. A person carrying on a financial services business in or from within Jersey other than a Jersey body corporate or a Jersey limited liability partnership must ensure that any branch or subsidiary applies measures that are at least equivalent to the requirements of the principal Order in respect of any such business. This requirement does not apply to the extent that the country or territory concerned prevents the application of such measures, nor does the requirement apply in respect of certain financial services business carried on by lawyers, accountants, estate agents, high value dealers and casinos.

Article 10 amends the heading of Part 2 of the principal Order so as to include “detection” of money laundering.

Article 11 amends Article 11 of the principal Order so as to broaden and clarify the circumstances which a person carrying on a financial services business is required to have in place policies, procedures and training to prevent and detect money laundering.

Article 12 amends Article 12 of the principal Order by setting out in more detail the circumstances in which sole traders need not maintain certain policies and procedures. The Article also repeals the requirements in relation to financial services business carried on outside Jersey: these latter requirements are dealt with in the inserted Article 10A.

Article 13 amends Article 13 of the principal Order by broadening and clarifying the circumstances in which customer due diligence measures must be applied.

Article 14 amends Article 14 of the principal Order to include transactions carried out in the course of operating a casino.

Article 15 amends Article 15 of the principal Order so as to set out in more detail what is comprised in “enhanced customer due diligence” and the circumstances in which it must be applied. These include where a customer is connected with a country or territory that does not apply, or insufficiently applies, the Forty Recommendations of the Financial Action Task Force on Money Laundering.

Article 16 amends Article 16 of the principal Order to set out more detailed requirements concerning when a person carrying on a financial services business may rely on identification of a customer carried out by an introducer or intermediary. An introducer or intermediary must give written assurance that he or she will provide a copy of the evidence without delay on request by the person carrying on the financial services business.

Article 17 amends Article 18 of the principal Order so as to add a further case where a person carrying on a financial services business need not apply identification measures. This is where the customer is a body corporate with securities listed on a regulated market. Article 17 also makes provision so that the exceptions from customer due diligence measures set out in Article 18 do not apply in any situation which presents a higher risk of money laundering.



Article 18 amends the heading of Part 4 of the principal Order so that it reads “Record-Keeping Requirements” in place of “Record-Keeping Procedures”.

Article 19 amends Article 19 of the principal Order so as to tighten and clarify the circumstances in respect of which records must be kept, including the records that an introducer or intermediary must keep and make available to a person carrying on a financial services business who has relied on that introducer or intermediary.

Article 20 amends the heading of Part 5 of the principal Order so that it reads “Reporting and Disclosure” in place of “Reporting Procedures and Requirements”.

Article 21 amends Article 21 of the principal Order so as to introduce a requirement that reports concerning suspected money laundering made to a designated police officer or designated customs officer are made using the Form set out in the Schedule to the Order and that any additional information required by such an officer must be supplied. The amendments also make provision so that the person to whom such reports must be made within an organisation carrying on a financial services business is the same person who is responsible within that organisation for receiving reports concerning suspected money laundering under the Proceeds of Crime (Jersey) Law 1999; the Drug Trafficking Offences (Jersey) Law 1988 and the Terrorism (Jersey) Law 2002.

Article 22 inserts **Article 22A** in the principal Order. Article 22A allows a person carrying on a financial services business to disclose certain information to any person or institution with whom or with which the person making the disclosure shares common ownership, management or compliance control if such disclosure is appropriate for preventing and detecting money laundering.

Article 23 amends Article 23 of the principal Order so that the current provisions referring to disclosure of suspected money laundering to the Jersey Financial Services Commission, or by that Commission to a designated police officer or customs officer, are extended to cover all designated supervisory bodies under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

Article 24 inserts Part 5A in the Order. Part 5A consists of **Articles 23A, 23B and 23C**. Article 23A prohibits a person carrying on a financial services business that is a bank from having a relationship with a shell bank, that is, a bank incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management and which is not subject to supervision by an overseas regulatory authority. Article 23B prohibits a person carrying on a financial services business from setting up an anonymous account or an account which the person knows or suspects is fictitious. Article 23C allows the Minister to impose measures, such as not entering into business relationships, with any person that is connected with a country or territory that is subject to counter-measures by the Financial Action Task Force on Money Laundering.

Article 25 sets out the title of the Order and provides that it will come into force 7 days after it is made.



Jersey

MONEY LAUNDERING (AMENDMENT No. 2) (JERSEY) ORDER 200-

Arrangement

Article

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SCHEDULE

23



Jersey

MONEY LAUNDERING (AMENDMENT No. 2) (JERSEY) ORDER 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE MINISTER FOR TREASURY AND RESOURCES, in pursuance of Articles 37 and 43 of the Proceeds of Crime (Jersey) Law 1999, and having consulted the Jersey Financial Services Commission, orders as follows –

1 Interpretation

In this Order “principal Order” means the Money Laundering (Jersey) Order 2008.

2 Article 1 amended

In Article 1(1) of the principal Order –

(a) the following definitions shall be inserted in the appropriate places –

“ ‘designated supervisory body’ means a supervisory body designated under Article 6 of the Proceeds of Crime (Supervisory Bodies) Law;”;

“ ‘Drug Trafficking Offences Law’ means the Drug Trafficking Offences (Jersey) Law 1988;”;

“ ‘enhanced customer due diligence measures’ has the meaning in Article 15(2);”;

“ ‘Proceeds of Crime (Supervisory Bodies) Law’ means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;”;

“ ‘source of the funds’ means the source of the funds that are used or to be used in a business relationship or a one-off transaction;”;

“ ‘Terrorism Law’ means the Terrorism (Jersey) Law 2002;”;

(b) for the definition “customer due diligence procedures” there shall be substituted the following definition –

- “ ‘customer due diligence measures’ means the measures described in Article 3(1);”;
- (c) the definition “identification of a person” shall be deleted;
 - (d) for the definition “identification procedures” there shall be substituted the following definition –

“ ‘identification measures’ means those measures described in Article 3(2);”;
 - (e) for the definition “on-going identification procedures” there shall be substituted the following definition –

“ ‘on-going monitoring’ has the meaning in Article 3(3);”;
 - (f) in the definition “overseas regulatory authority” for the words “forestalling and prevention” there shall be substituted the words “prevention and detection”;
 - (g) in the definition “regulated business” after the words “a permit” in paragraph (b) there shall be inserted the words “or is a certificate holder”;
 - (h) in the definition “reporting officer” after the words “Article 8(1)” there shall be added the words “or (3)”;
 - (i) in the definition “secondary recipient” after the words “the Commission” there shall be added the words “or a designated supervisory body”.

3 Amendments relating to the word “procedures”

In the principal Order for the phrase –

- (a) “customer due diligence procedures” there shall be substituted the phrase “customer due diligence measures”,
- (b) “identification procedures”, except in the phrase “on-going identification procedures”, there shall be substituted the phrase “identification measures”,
- (c) “enhanced customer due diligence procedures” there shall be substituted the phrase “enhanced customer due diligence measures”,
- (d) “on-going identification procedures” there shall be substituted the phrase “on-going monitoring”,

each time that phrase appears in the Order, including in headings.

4 Article 2 amended

In Article 2(3) of the principal Order for the words “stocks or shares of which are admitted to trading” there shall be substituted the words “securities of which are listed”.

5 Article 3 amended

In Article 3 of the principal Order –

- (a) in the opening words of paragraph (2) for the words “are procedures” there shall be substituted the words “are measures”;
- (b) in paragraph (2)(c)(i) after the word “customer” there shall be added the words “and verifying the authority of any person purporting so to act”;
- (c) in paragraph (2)(c)(ii) after the words “that customer” there shall be added the words “and the provisions under which the customer can enter into legal arrangements”;
- (d) in the opening words of paragraph (3) for the words “are procedures for” there shall be substituted the word “means”;
- (e) in paragraph (3)(a) –
 - (i) for the words “that relationship” there shall be substituted the words “a business relationship”, and
 - (ii) after the words “risk profile” there shall be inserted the words “(such scrutiny to include, where necessary, the source of the funds)”;
- (f) in paragraph (3)(b) for the words “applying the procedures” there shall be substituted the words “the scrutiny”;
- (g) in paragraph (4) for the words “this Order” there shall be substituted the words “paragraph (2)”;
- (h) in paragraph (4)(b) after the words “obtaining evidence” there shall be inserted the words “,on the basis of documents, data or information from a reliable and independent source,”;
- (i) in paragraphs (5) and (6) for the word “procedures” there shall be substituted the word “measures”.

6 Article 7 amended

In Article 7 of the principal Order –

- (a) after paragraph (2) there shall be inserted the following paragraph –
 - “(2A) A relevant person must ensure that –
 - (a) the individual appointed as compliance officer under this Article is of an appropriate level of seniority; and
 - (b) such compliance officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a compliance officer.”;
- (b) in paragraph (3) after the words “money laundering” there shall be inserted the words “and any relevant Code of Practice issued under Article 22 of the Proceeds of Crime (Supervisory Bodies) Law”;
- (c) for paragraph (10) there shall be substituted the following paragraph –
 - “(10) The notified person shall be deemed to have been appointed under this Article and the relevant person will be deemed to have complied with paragraph (6).”.

7 Article 8 amended

In Article 8 of the principal Order –

- (a) after paragraph (2) there shall be inserted the following paragraph –
 - “(2A) A relevant person must ensure that –
 - (a) the individual appointed as reporting officer under this Article is of an appropriate level of seniority; and
 - (b) such reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a reporting officer.”;
- (b) for paragraph (8) there shall be substituted the following paragraph –
 - “(8) The notified person shall be deemed to have been appointed under this Article and the relevant person will be deemed to have complied with paragraph (4).”.

8 Article 9 amended

In Article 9 of the principal Order –

- (a) the existing paragraph shall be numbered (1);
- (b) after paragraph (1) there shall be inserted the following paragraph –
 - “(2) A relevant person must ensure that –
 - (a) a designated person is of an appropriate level of seniority; and
 - (b) a designated person has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a designated person.”.

9 Article 10A inserted

After Article 10 there shall be inserted the following Article –

“10A Financial Services Business carried on outside Jersey

- (1) This Article applies to financial services business carried on in a country or territory outside Jersey.
- (2) Subject to the provisions of this Article, a relevant person who falls within paragraph (b) of the definition “relevant person” must –
 - (a) comply with the requirements of this Order in respect of any financial services business to which this Article applies carried on by the relevant person;
 - (b) ensure that any subsidiary of that relevant person applies measures that are at least equivalent to the requirements of this Order in respect of any financial services business to which this Article applies carried on by that subsidiary.
- (3) Subject to the provisions of this Article, a relevant person to whom paragraph (5) applies must apply measures that are at least

equivalent to the requirements of this Order in respect of any financial services business to which this Article applies carried on by any branch.

- (4) Subject to the provisions of this Article, a relevant person to whom paragraph (5) applies must ensure that any subsidiary of that relevant person applies measures that are at least equivalent to the requirements of this Order in respect of any financial services business to which this Article applies carried on by that subsidiary.
- (5) This paragraph applies to a relevant person who falls within paragraph (a) of the definition 'relevant person' and who does not fall within paragraph (b) of that definition.
- (6) A relevant person need not comply with paragraphs (2), (3) and (4) to the extent that the law of the country or territory in which that person carries on a financial services business, or has a subsidiary carrying on such a business, has the effect of prohibiting compliance with those paragraphs.
- (7) Where paragraph (6) applies, the relevant person must inform the supervisory body exercising supervisory functions in relation to that relevant person under the Proceeds of Crime (Supervisory Bodies) Law.
- (8) Where paragraph (6) applies, to the extent that the law of the country or territory concerned does not have the effect of prohibiting or preventing the relevant person from taking other reasonable steps to deal effectively with the risk of money laundering, the relevant person must take those reasonable steps.
- (9) A relevant person need not comply with paragraphs (2), (3) and (4) in a country or territory outside Jersey in respect of any financial services business that falls within paragraphs 1 to 5 of Part B of Schedule 2 of the Law.
- (10) If, in a country or territory outside Jersey –
 - (a) a relevant person carries on a financial services business or has a subsidiary carrying on such a business; and
 - (b) that country or territory has more stringent requirements than those set out in this Order,the relevant person must ensure that those more stringent requirements are complied with.”.

10 Part 2 heading amended

For the heading of Part 2 of the principal Order there shall be substituted the following heading –

“PREVENTION AND DETECTION OF MONEY LAUNDERING”.

11 Article 11 amended

In Article 11 of the principal Order –

- (a) for the heading there shall be substituted the heading –

“11 Policies, procedures and training to prevent and detect money laundering”;

- (b) for paragraph (1) there shall be substituted the following paragraph –

“(1) A relevant person must maintain appropriate policies and procedures relating to –

- (a) customer due diligence measures;
- (b) reporting;
- (c) record-keeping;
- (d) screening of employees;
- (e) internal control;
- (f) risk assessment and management; and
- (g) the monitoring and management of compliance with, and the internal communication of, such policies and procedures,

in respect of that person’s financial services business in order to prevent and detect money laundering.”;

- (c) in paragraph (2) for the words “ ‘appropriate policies’ means policies” there shall be substituted the words “ ‘appropriate policies and procedures’ means polices and procedures”;

- (d) for paragraphs (3) and 4 there shall be substituted the following paragraphs –

“(3) The policies and procedures referred to in paragraph (2) must include policies and procedures for –

- (a) the identification and scrutiny of –
 - (i) complex or unusually large transactions,
 - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose, and
 - (iii) any other activity which the relevant person regards as particularly likely by its nature to be related to the risk of money laundering;
- (b) the taking of additional measures, where appropriate, to prevent the use for money laundering of products and transactions which are susceptible to anonymity;
- (c) determining whether –
 - (i) a customer,
 - (ii) a beneficial owner or controller of a customer,
 - (iii) a third party for whom a customer is acting,

- (iv) a beneficial owner or controller of a third party described in clause (iii),
 - (v) a person acting, or purporting to act, on behalf of a customer,is a politically exposed person;
 - (d) determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations;
 - (e) determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering, such measures being imposed by one or more countries or sanctioned by the European Union or the United Nations;
 - (f) assessing the risk referred to in Article 13(4)(b).
- (3A) For the purposes of paragraph (3)(a) ‘scrutiny’ includes scrutinising the background and purpose of transactions and activities.
- (4) For the purposes of this Article ‘transaction’ means any of the following –
- (a) a one-off transaction;
 - (b) transactions within a one-off transaction; and
 - (c) transactions within a business relationship.”;
- (e) paragraphs (6) and (7) shall be revoked;
- (f) for paragraph (8) there shall be substituted the following paragraph –
- “(8) A relevant person with any subsidiary or branch that carries on a financial services business must communicate to that subsidiary or branch that person’s policies and procedures for complying with paragraph (1).”;
- (g) in the opening words of paragraph (9) for the words “financial services” there shall be substituted the words “financial services business”;
- (h) in paragraph (9)(a) before the word “procedures” there shall be inserted the words “policies and”;
- (i) in paragraph (9)(b) after the words “money laundering” there shall be inserted the words “and any relevant Code of Practice issued under Article 22 of the Proceeds of Crime (Supervisory Bodies) Law”;
- (j) after paragraph (10) there shall be inserted the following paragraph –
- “(10A) For the purposes of paragraph (10), such training shall include the provision of information on current money laundering techniques, methods and trends.”;
- (k) in paragraph (11)(a) for the words “procedures applied” there shall be substituted the words “policies and procedures maintained”.

12 Article 12 substituted

For Article 12 of the principal Order there shall be substituted the following Article –

“12 Exception from Article 11

A sole trader need not maintain policies and procedures relating to internal reporting, screening of employees and the internal communication of such policies and procedures.”.

13 Article 13 amended

In Article 13 of the principal Order –

- (a) in paragraph (2B)(a) for the word “procedures” there shall be substituted the word “scrutiny”;
- (b) in the words at the end of paragraph (2B)(b) for the word “procedures” there shall be substituted the word “scrutiny”;
- (c) for paragraph (3)(b) there shall be substituted the following sub-paragraph –
 - “(b) for the application of on-going monitoring, throughout the business relationship as described in Article 3(3).”;
- (d) in paragraph (4)(b) after the word “occurring” there shall be inserted the words “as a result of completing such identification after the establishment of that relationship”;
- (e) in paragraph (5) for the words “Article 4(1)(b)(ii) or Article 4(1)(d)(ii)” there shall be substituted the words “Article 4(1)(b)(ii), Article 4(1)(d)(ii) or Article 4(1)(f) (ii)”.

14 Article 14 amended

In Article 14(12) of the principal Order for the words “sub-paragraph (b) or (d) of Article 4(1)” there shall be substituted the words “Article 4(1)(b), (d) or (f)”.

15 Article 15 amended

In Article 15 of the principal Order –

- (a) in paragraph (1)(b) the word “other” shall be deleted;
- (b) for paragraph (2) there shall be substituted the following paragraph –
 - “(2) For the purposes of this Order ‘enhanced customer due diligence measures’ means customer due diligence measures that involve specific and adequate measures to compensate for the higher risk of money laundering.”;
- (c) after paragraph (3) there shall be inserted the following paragraph –
 - “(3A) This paragraph applies where a relevant person has, or proposes to have, a business relationship with, or proposes to carry out a one-



- off transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations.”;
- (d) in paragraph (4) for the words “who is registered under the Banking Business (Jersey) Law 1991” there shall be substituted the words “to whom paragraph (4A) applies”;
- (e) after paragraph (4) there shall be substituted the following paragraphs –
- “(4A) This paragraph applies to a relevant person who carries on a deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991 except the doing of anything by or on behalf of –
- (a) the States;
 - (b) the central bank of a member State of the European Community; or
 - (c) the National Savings Bank of the United Kingdom.
- (4B) Where paragraph (4) applies, the specific and adequate measures that are referred to in paragraph (2) shall include –
- (a) gathering sufficient information about the institution to understand fully the nature of its business;
 - (b) determining the reputation of the institution and the quality of its supervision, including whether it has been subject to any money laundering investigation or regulatory action;
 - (c) assessing the institution’s systems and controls to combat money laundering in order to determine whether they are consistent with the requirements of the FATF recommendations and their effectiveness;
 - (d) requiring any new relationship to be approved by the senior management of the relevant person;
 - (e) recording the respective responsibilities of the relevant person and the institution to prevent and detect money laundering so that both parties clearly understand those responsibilities;
 - (f) being satisfied that, in respect of customers of the institution who have services provided directly by the relevant person, that the institution has applied customer due diligence measures at least equivalent to those set out in this Order and is able to provide a copy, at the request of the relevant person, of the evidence, documents, data and information obtained when applying such measures.”;
- (f) for paragraph (5) there shall be substituted the following paragraphs –
- “(5) This paragraph applies where –
- (a) a relevant person has or proposes to have a business relationship with a politically exposed person or proposes to carry out a one-off transaction with such a person; or
 - (b) any of the following is a politically exposed person –

- (i) a beneficial owner or controller of the customer,
- (ii) a third party for whom a customer is acting,
- (iii) a beneficial owner or controller of a third party described in clause (ii),
- (iv) a person acting, or purporting to act, on behalf of the customer.

(5A) Where paragraph (5) applies, the specific and adequate measures that are referred to in paragraph (2) must include –

- (a) requiring any new business relationship or continuation of such a relationship or any new one-off transaction to be approved by the senior management of the relevant person; and
- (b) measures to establish the source of the wealth of the politically exposed person and source of the funds involved in the business relationship or one-off transaction.

(5B) In paragraph (5A)(b) “source of the wealth” means the source generating the total net worth of funds of the politically exposed person, whether or not those funds are used in the business relationship or one-off transaction.”.

16 Article 16 amended

In Article 16 of the principal Order –

- (a) in paragraph (1)(b), for the word “procedures” there shall be substituted the word “measures”;
- (b) for paragraph (4)(b)(ii) there shall be substituted the following clause –
 - “(ii) the other person is required to keep and does keep evidence of the identification, as described in Article 3(4), relating to each of the other person’s customers and a record of such evidence.”;
- (c) for paragraph (4)(b)(iii) there shall be substituted the following clause –
 - “(iii) the other person will keep the evidence described in clause (ii) and will provide a copy of that evidence without delay to the relevant person at the relevant person’s request.”;
- (d) in paragraph (6) for the word “Law” there shall be substituted the word “Order”.

17 Article 18 amended

In Article 18 of the principal Order –

- (a) in paragraph (1) for the letter “E” there shall be substituted the letter “F”;
- (b) in paragraph (2) for the words “the person whose identity is to be verified” there shall be substituted the words “the customer of the relevant person”;

- (c) in paragraph (3) after the words “contributions to the scheme are made” there shall be inserted the words “by an employer or”;
- (d) after paragraph (6) there shall be inserted the following paragraph –
 - “(6A) Case F is where the customer of a relevant person is a body corporate the securities of which are listed on a regulated market where “regulated market” has the same meaning as in Article 2(5).”;
- (e) in paragraph (7) for the word “procedures” there shall be substituted the word “measures”;
- (e) in paragraph (8)(c) after the words “course of employment by” there shall be inserted the words “a person carrying on”;
- (f) in the words at the end of paragraph (8) for the word “procedure” there shall be substituted the word “measures”;
- (g) in paragraph (8A) for the words “such procedures” there shall be substituted the words “such measures”;
- (f) in paragraph (9) for the words “Article 13(1)(c)(i)” there shall be substituted the words “Articles 13(1)(c)(i) and 15(1)(b)”.

18 Part 4 heading amended

In the heading of Part 4 for the word “procedures” there shall be substituted the word “requirements”.

19 Article 19 amended

In Article 19 of the principal Order –

- (a) for paragraph (2)(a)(ii) there shall be substituted the following clause –
 - “(ii) all the supporting documents, data or information that have been obtained in respect of a business relationship or one-off transaction following the application of customer due diligence measures.”;
- (b) after paragraph (4) there shall be added the following paragraph –
 - “(5) Where the relevant person (‘first person’) is an introducer or intermediary and has given the assurance that is required under Article 16(4)(b) to another relevant person (‘second person’), the first person must make available to the second person, at the second person’s request, a copy of the evidence of identification that the first person is required to keep under this Article, such evidence being the evidence that is referred to in Article 16(4)(b)(iii).”.

20 Part 5 heading amended

For the heading of Part 5 of the principal Order there shall be substituted the heading –

“REPORTING AND DISCLOSURE”.

21 Article 21 amended

In Article 21 of the principal Order –

- (a) in the heading after the word “procedures” there shall be inserted the words “and requirements”;
- (b) the existing paragraph shall be numbered (1);
- (c) for paragraph (1)(c) there shall be substituted the following sub-paragraph –
 - “(c) they must provide for securing that a report is made to the person who is referred to in paragraph (6) (a), (b) and (c) for the purposes of the provisions mentioned in that paragraph;”;
- (d) in paragraph (1)(d) the word “such” shall be deleted;
- (e) for paragraph (1)(h) there shall be substituted the following sub-paragraph –
 - “(h) they must provide for securing that the information or other matter contained in a report is disclosed, by the person considering the report under sub-paragraph (d) or (f), to a designated police officer or designated customs officer as soon as is practicable, using the form set out in the Schedule to this Order (‘Form’), where the person considering the report knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;”;
- (f) after paragraph (1)(h) there shall be inserted the following sub-paragraph –
 - “(ha) they must provide for securing that the person who makes a disclosure under sub-paragraph (h) provides the designated police officer or designated customs officer with such additional information relating to that disclosure as that officer may reasonably request and that such information is provided in such form and within such reasonable period as that officer may reasonably request;”;
- (g) paragraph (1)(i) shall be revoked;
- (h) after paragraph (1) there shall be added the following paragraphs –
 - “(2) If a person considering a report under paragraph (1)(d) or (1)(f) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, the first person must, as soon as is practicable, make a disclosure to a designated police officer or designated customs officer –
 - (a) by using the Form; and
 - (b) in compliance with the requirements indicated on the Form.
 - (3) The person making the disclosure under paragraph (2) must ensure that –

- (a) a completed Form is delivered in the manner indicated on the Form; and
 - (b) any information entered upon or accompanying the Form is legible.
- (4) A person who makes a disclosure under paragraph (2) must provide the designated police officer or designated customs officer with such additional information relating to that disclosure as that officer may reasonably request in such form and within such reasonable period as that officer may require;
- (5) Where the relevant person's business falls within paragraph 1 or 2 of Part B of Schedule 2 to the Law the requirements described in paragraphs (1)(h), (1)(ha), (2) and (4) need not apply where the information or other matter that would be the subject of disclosure has been received in the course of ascertaining the legal position for the relevant person's client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution of legal proceedings.
- (6) A designated person or, if there is no such person, the reporting officer, shall be –
- (a) the nominated officer referred to in –
 - (i) Article 40A of the Drug Trafficking Offences Law,
 - (ii) Article 34D of the Law, and
 - (iii) Article 23 of the Terrorism Law;
 - (b) the appropriate person referred to in –
 - (i) Articles 37(5) and 38(8) of the Drug Trafficking Offences Law, and
 - (ii) Articles 32(5) and 33(8) of the Law; and
 - (c) the person to whom disclosure may be made under any procedure established by an employer as described in Articles 21(4) and 22(6) of the Terrorism Law.”.

22 Article 22A inserted

After Article 22 of the principal Order there shall be inserted the following Article –

“22A Disclosure within the relevant person's organization

A relevant person may disclose –

- (a) the information contained in any report for the purpose of any of the provisions mentioned in Article 21(6);
- (b) any additional information required under Article 21(4);
- (c) the information contained in any record kept by the relevant person for the purpose of this Order,

to any person or institution with whom or which the relevant person shares common ownership, management or compliance control where such disclosure is appropriate for the purpose of preventing and detecting money laundering.”.

23 Article 23 amended

In Article 23 of the principal Order –

- (1) paragraph (4)(e) shall be revoked;
- (2) in paragraph (4)(l) the word “and” shall be deleted;
- (3) in paragraph (4)(m) for the full-stop there shall be substituted “; and”;
- (4) after paragraph (4)(m) there shall be added the following sub-paragraph –
 - “(n) an agent appointed by the Commission under Article 10(1) of the Financial Services Commission (Jersey) Law 1998.”;
- (5) after paragraph (5) there shall be inserted the following paragraphs –
 - “(5A) If a designated supervisory body (other than the Commission) –
 - (a) obtains any information; and
 - (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,that body shall disclose that information to a designated police officer or designated customs officer as soon as is reasonably practicable.
 - (5B) If a person is a secondary recipient of information obtained by a designated supervisory body (other than the Commission) and forms such an opinion as is described in paragraph (5A)(b), the person may disclose the information to a designated police officer or designated customs officer.
 - (5C) If any person referred to in paragraph (5D) –
 - (a) obtains any information while acting in the course of any investigation, or discharging functions, to which the person’s authorization or appointment relates; and
 - (b) is of the opinion that the information indicates that any other person has or may have been engaged in money laundering,the first person shall as soon as reasonably practicable disclose that information to the persons and bodies referred to in paragraph (5E).
 - (5D) The persons to whom this paragraph refers are –
 - (a) a person authorized by a suitable supervisory body under Article 30 of the Proceeds of Crime (Supervisory Bodies) Law to require a person to provide information or documents or to answer questions; and
 - (b) a person appointed by a suitable supervisory body under Article 31 of that Law to investigate and report under that Article to that body.

- (5E) The persons and bodies to whom this paragraph refers are –
 - (a) the suitable supervisory body referred to in paragraph (5D); and
 - (b) a designated police officer or designated customs officer.
- (5F) In this Article ‘suitable supervisory body’ has the same meaning as in the Proceeds of Crime (Supervisory Bodies) Law.”.

24 Part 5A inserted

After Part 5 of the principal Law there shall be inserted the following Part –

“PART 5A OTHER MEASURES

23A Shell banks

- (1) A relevant person to whom paragraph (3) applies must not enter into or continue a banking relationship with a shell bank.
- (2) A relevant person to whom paragraph (3) applies must take appropriate measures to ensure that he or she does not enter into, or continue, a banking relationship with a bank that is known to permit its accounts to be used by a shell bank.
- (3) This paragraph applies to a relevant person who carries on a deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991 except the doing of anything by or on behalf of –
 - (a) the States;
 - (b) the central bank of a member State of the European Community; or
 - (c) the National Savings Bank of the United Kingdom.
- (4) For the purposes of paragraphs (1) and (2) –
 - (a) ‘bank’ means a person or body carrying on a deposit-taking business within the meaning of the Banking Business (Jersey) Law 1991 whether or not that business is carried on from within Jersey; and
 - (b) ‘shell bank’ means a bank incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is not subject to supervision by the Commission or by an overseas regulatory authority by reason of that bank’s connection with any other institution or person.
- (5) For the purposes of paragraph (4)(b), ‘connection’ has the same meaning as in Article 3A of the Income Tax (Jersey) Law 1961.

23B Anonymous accounts

A relevant person must not, in relation to any of that person's customers, set up an anonymous account or an account in a name which it knows, or has reasonable cause to suspect, to be fictitious.

23C Directions where the Financial Action Task Force applies counter-measures

- (1) The Minister may, after consultation with the Commission and any relevant supervisory body, direct any relevant person –
 - (a) not to enter into a business relationship;
 - (b) not to carry out a one-off transaction;
 - (c) not to proceed any further with a business relationship or one-off transaction;
 - (d) to impose any prohibition, restriction or limitation relating to a business relationship or one-off transaction;
 - (e) to apply enhanced customer due diligence measures to any business relationship or one-off transaction,

with any person who is situated or incorporated in a country or territory to which the international body known as the Financial Action Task Force on Money Laundering has decided to apply counter-measures.

- (2) In paragraph (1), 'relevant supervisory body' means the supervisory body exercising supervisory functions in relation to that relevant person under the Proceeds of Crime (Supervisory Bodies) Law."

25 Citation and commencement

- (1) This Order may be cited as the Money Laundering (Amendment No. 2) (Jersey) Order 200-.
- (2) This Order shall come into force 7 days after it is made.

SCHEDULE

(Article 21)

(Form to be attached)

