



ANTI-MONEY LAUNDERING/ COUNTERING THE FINANCING OF TERRORISM STRATEGY GROUP

CONSULTATION PAPER NO. 1 2007

REVISION TO THE DEFINITION OF FINANCIAL SERVICES BUSINESS

**Proposed revisions to Schedule 2 of the Proceeds of Crime
(Jersey) Law 1999 to update the definition of financial
services business**

CONSULTATION PAPER

The Anti-Money Laundering/Countering the Financing of Terrorism Strategy Group (“**AML/CFT Strategy Group**”) invites comments on this consultation paper.

Jersey Finance Limited (“**JFL**”) will be responding to the AML/CFT Strategy Group in respect of the impact of the proposals in this consultation paper on its members. JFL members who wish to contribute to JFL’s deliberations should contact:

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The Jersey Chamber of Commerce and Industry Incorporated (“**the Chamber**”) will be responding to the AML/CFT Strategy Group in respect of the impact of the proposals in this consultation paper on its non-finance industry members. Chamber members who wish to contribute to the Chamber’s deliberations should contact:

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Otherwise, responses may be sent directly to Helen Holmes at the AML/CFT Strategy Group Secretariat. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the AML/CFT Strategy Group Secretariat. The contact details are:

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All comments should reach the AML/CFT Strategy Group by 27 July 2007.

It is the policy of the AML/CFT Strategy Group to make the content of all responses available for public inspection unless specifically requested otherwise.

CONSULTATION PAPER

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1 - EXECUTIVE SUMMARY

OVERVIEW

- 1.1 In response to improved understanding of the threat of money laundering and terrorist financing, there have been a number of key developments in international standards since the introduction of the Proceeds of Crime (Jersey) Law 1999 (“**Proceeds of Crime Law**”). One key development has been the identification of a number of new sectors perceived to be vulnerable to those seeking to launder funds or to finance terrorism.
- 1.2 This consultation paper sets out developments in international standards in this particular area, considers how key jurisdictions have reacted to these new standards, and sets out how the AML/CFT Strategy Group believes that Jersey should achieve compliance with international standards.

WHAT IS PROPOSED AND WHY?

- 1.3 The Financial Action Task Force (the “**FATF**”), the body for setting international standards for combating money laundering and the financing of terrorism, has expanded the sectors that it expects to be subject to measures to combat money laundering and terrorist financing to include sectors previously considered to be outside of the traditional financial sector.
- 1.4 The Money Laundering (Jersey) Order 1999 (the “**Money Laundering Order**”) sets out the measures that certain sectors must take to guard against money laundering and terrorist financing (“**AML/CFT**”). The sectors required to comply with the Money Laundering Order are set out in Schedule 2 of the Proceeds of Crime Law (“**Schedule 2**”), and are referred to as financial services business¹. The current list of activities set out in Schedule 2 can be found at Appendix C. The purpose of this consultation paper is to propose that Schedule 2 be updated (see Appendix B) to incorporate those additional sectors now listed by the FATF in its revised 40 Recommendations on Money Laundering and Terrorist Financing (last updated in October 2004) (“**FATF Recommendations**”).
- 1.5 Additionally, it is proposed that the way in which the European Union (the “**EU**”) and the United Kingdom (the “**UK**”) have expanded the list of sectors subject to AML/CFT requirements be also considered as a part of these proposals, as consistency with the UK and EU will assist in demonstrating the equivalence of Jersey’s measures to Member States of the EU, facilitating continued access by Jersey businesses to UK and EU markets.
- 1.6 This consultation paper is restricted to considering the definition of those businesses to be required to comply with AML/CFT requirements, and does not also address other features of the FATF Recommendations concerning registration and oversight requirements for

¹ It is worth noting that this definition is not the same as financial service business, which is a list of activities that are subject to prudential regulation by the Jersey Financial Services Commission, and which is defined in Article 2 of the Financial Services (Jersey) Law 1998.

sectors subject to AML/CFT requirements. These topics are the subject of a separate concurrent consultation paper².

- 1.7 The International Monetary Fund (the “IMF”) will visit Jersey, and also Guernsey and the Isle of Man, in the second quarter of 2008. The purpose of this visit is to assess the Island against the international standards set by the FATF, as well as against international standards for the banking, insurance and securities sectors. The IMF will rate Jersey’s AML/CFT framework against the requirements of the FATF Recommendations; any deficiencies in the framework will impact the ratings which Jersey will receive against these international standards.
- 1.8 It is likely that Jersey’s status as an offshore finance centre will focus the spotlight on its ability to measure up to AML/CFT standards. Failure to apply international standards could, as a worst-case scenario, result in Jersey failing to be considered as an equivalent jurisdiction for AML/CFT purposes, e.g. by the EU.

WHO WOULD BE AFFECTED?

- 1.9 The additional sectors that will be added to Schedule 2 are:
 - 1.9.1 Casinos and internet casinos.
 - 1.9.2 Estate agents when involved in transactions for their clients concerning the buying and selling of real estate.
 - 1.9.3 High value goods dealers when accepting payment in cash for €15,000 or more.
 - 1.9.4 Lawyers, notaries and other independent legal professionals when participating in or assisting in the planning or execution of financial or property transactions.
 - 1.9.5 External accountants, auditors, tax advisors and insolvency practitioners.
- 1.10 It is worth noting that whilst lawyers and accountants may already conduct certain activities that are subject to AML/CFT legislation, the proposals in this consultation paper will result in estate agents and high value goods dealers being subject to such legislation for the first time. Since the measures to be applied are risk-based, it is unlikely that the proposals will involve a significant amount of extra work to comply with AML/CFT legislation.
- 1.11 Additionally, the consultation paper sets out the Jersey Financial Services Commission’s (“JFSC”) view on the application of Schedule 2 to activities that are currently subject to exclusions or exemptions for the purposes of prudential supervision under the Financial Services (Jersey) Law 1998 (“**Financial Services Law**”), the Insurance Business (Jersey) Law 1996 (“**Insurance Business Law**”), the Banking Business (Jersey) Law 1991 and the Collective Investment Funds (Jersey) Law 1988 (“**Collective Investment Funds Law**”).

² Entitled “Overseeing compliance with legislation to detect and prevent money laundering and the financing of terrorism”.

2 - CONSULTATION

- 2.1 The AML/CFT Strategy Group has issued this consultation paper and invites comments in writing from interested parties on the proposals set out herein. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- prioritise comments and to indicate their relative importance; and
 - respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 2.3 Following the consultation period, and having considered the feedback received, it is the intention of the AML/CFT Strategy Group to request the Minister for Treasury and Resources to present and lodge au Greffe draft Regulations (made under the Proceeds of Crime Law) incorporating the amended Schedule 2. It is proposed that the draft Regulations will provide a sufficient implementation period, enabling businesses to prepare to comply with the requirements of the Money Laundering Order, or the revised requirements of the draft Money Laundering (Jersey) Order 200-, if in force at this time.
- 2.4 Additionally, the AML/CFT Strategy Group will recommend that the Minister for Treasury and Resources make an amendment to the Money Laundering Order, to come into force at the same time as the draft Regulations referred to above, to incorporate provisions providing for circumstances where information otherwise subject to disclosure requirements need not be disclosed for reasons of professional privilege, to provide for thresholds for the identification of casino customers, and to provide any specific requirements necessary for low risk customers of estate agents.

3 - THE AML/CFT STRATEGY GROUP

- 3.1 The AML/CFT Strategy Group is chaired by the Chief Executive of the States and comprises officers from the following government departments and agencies: the Chief Minister's Department, the Economic Development Department, the Law Officers' Department, the Joint Financial Crimes Unit, the JFSC, and the Shadow Gambling Commission.
- 3.2 The purpose of the AML/CFT Strategy Group is to provide a forum for the Island agencies represented on the group to liaise, discuss and develop coordinated strategies and policies to enhance Jersey's capability to prevent and detect financial crime and terrorist financing.
- 3.3 The JFSC provides the secretariat for the group.

4 - ADDITIONAL SECTORS

THE LEGAL SECTOR

- 4.1 The FATF Recommendations require that AML/CFT requirements be extended to the legal sector when conducting certain activities for clients.
- 4.2 The EU Second Money Laundering Directive (2001/97/EC) (the “**Second Directive**”) introduced AML requirements for the legal sector in line with the requirements of the FATF. The UK implemented the Second Directive through its Money Laundering Regulations 2003, which came into force in March 2004. In its Third Money Laundering Directive (2005/60/EC) (the “**Third Directive**”), the EU continues to apply AML/CFT requirements to the legal sector. The scope of the Third Directive and draft UK definitions for the legal sector (set out in the draft Money Laundering Regulations 2007) are consistent with the requirements of the FATF.
- 4.3 It is proposed that the scope of application of AML/CFT requirements to Jersey’s legal sector mirror that of the Third Directive, to be implemented into UK legislation, to ensure a level playing field with the UK and EU requirements.
- 4.4 The draft UK legislation applies AML/CFT requirements to notaries and other independent legal professionals when they participate (whether by acting for or on behalf of their client) or assist in the planning or execution of financial or property transactions concerning:
- a) the buying and selling of real property or business entities;
 - b) the managing of client money, securities or other assets;
 - c) the opening or management of bank, savings or securities accounts;
 - d) the organisation of contributions necessary for the creation, operation or management of companies; or
 - e) the creation, operation or management of trusts, companies or similar structures.
- 4.5 Independent legal professionals are defined in the draft UK legislation to exclude legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.
- 4.5.1 Do you agree that this definition for the legal sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.**

THE ACCOUNTANCY AND AUDIT SECTOR

- 4.6 The FATF Recommendations require that AML/CFT measures be extended to the accountancy sector when conducting certain activities for clients. These activities are identical to those listed above for the legal sector. While not requiring AML/CFT measures to be applied to audit services, the FATF does ask, as an additional criterion, whether jurisdictions have also applied AML/CFT requirements to this sector.

4.7 The Second Directive, however, introduced AML requirements for a wider population of the accountancy sector than that expected by the FATF. Rather than limiting the requirements to accountants when they conduct specific activities, the EU requires auditors, external accountants and tax advisors, in the exercise of any of their professional activities, to comply with AML legislation. This broader definition has been retained by the EU in its Third Directive (which now also embraces CFT).

4.8 Additionally, the UK Money Laundering Regulations 2003 have applied AML requirements to the activities of those appointed as insolvency practitioners under UK insolvency legislation (section 388 of the Insolvency Act 1986). UK legislation defines the activity of an insolvency practitioner as the following:

In relation to a company by acting –

- (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
- (b) as supervisor of a voluntary arrangement.

In relation to an individual by acting –

- (a) as his trustee in bankruptcy or interim receiver of his property; or
- (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors; or
- (c) as supervisor of a voluntary arrangement proposed by him; or
- (d) in the case of a deceased individual, as administrator of an insolvent estate.

4.9 It is proposed to mirror the scope implemented in EU legislation and UK legislation. The definition applied by the EU, while covering a wider range of activities, is likely to prove more straightforward to implement and to comply with, as there is no need to determine whether a particular relationship with a client falls inside or outside the scope of a definition, or to determine whether, following the change in the nature of a client relationship, the new activities now fall within the scope. A similar scope to that of the UK will also simplify the application of group procedures to Jersey accountancy firms that are part of a UK network. Feedback received in response to the JFSC's Consultation Paper No. 4 2006 (Handbook for the prevention and detection of money laundering and terrorist financing) did not highlight that respondents had objections to following the EU rather than the FATF approach. However, members of the accountancy and audit sector are invited to provide their views on this proposed approach.

4.10 In the case of insolvency practitioners, it is intended to extend requirements to a person that provides insolvency services, being a person that, by way of business, accepts appointment as: a liquidator under Chapter 4 of Part 21 of the Companies (Jersey) Law 1991, as revised; an insolvency manager appointed under the Limited Liability Partnerships (Jersey) Law 1997 (as modified by the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998); or as an agent of an official functionary appointed in the case of a *remise de biens, cession, or désastre*.

4.10.1 Do you agree that this definition for the accountancy and audit sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.

THE ESTATE AGENCY SECTOR

- 4.11 As with the legal, audit and accountancy sectors, the work of estate agents is perceived by the international standard setters to be vulnerable to those seeking to launder money and finance terrorism, *irrespective of whether the activities conducted involve the control of customer assets*. As a result, the Second Directive, issued in 2001, included real estate agents within its scope, a lead also taken up by the FATF Recommendations. The UK estate agency sector has been subject to AML requirements since March 2004.
- 4.12 The FATF requires real estate agents, when they are involved in transactions for their clients concerning the buying and selling of real estate, to be subject to AML/CFT requirements. The UK Money Laundering Regulations 2003 apply AML requirements to persons undertaking estate agency work within the meaning given by section 1 of the Estate Agents Act 1979; this covers dealing with people who want to buy or sell freehold or leasehold property (including commercial and agricultural property) where this is done as part of a business and involves acting on instructions from a client.
- 4.13 The UK Office of Fair Trading lists the following as work not covered by the UK Estate Agency Act 1979:
- work done by solicitors or their employees as part of their work as solicitors;
 - surveys or valuations carried out independently of any other estate agency work;
 - work connected with planning applications;
 - arranging rentals or property management;
 - businesses providing advertising space for property, with no other estate agency function;
 - overseas property transactions; and
 - work done in the course of arranging mortgages and insurance.
- 4.14 The Chamber and the Committee of the Jersey Estate Agents Association have both provided useful feedback following the issue of the JFSC's Consultation Paper No. 4 2006 (Handbook for the prevention and detection of money laundering and terrorist financing). Both responses are published on the JFSC's website. The feedback highlighted that the main activities conducted by Jersey estate agents concerned Jersey and overseas property transactions, and lettings, the latter falling outside the scope of the expectations of the FATF. It was highlighted that generally, funds would be controlled by clients' lawyers or notaries, and would be subject to scrutiny by the banks in which the funds were held. As a result, unnecessary duplication could occur should more than one party involved in the transaction be subject to requirements to identify the clients involved.
- 4.15 Additionally it was highlighted that many local transactions would be required to be approved and registered by the Royal Court and be subject to housing consent, and as such, would be low risk.

- 4.16 In order to demonstrate consistency with international AML/CFT standards, it will be necessary to include the estate agency sector within the scope of Schedule 2. It is proposed that the FATF definition is adopted in Jersey, as this will cover both local and overseas property transactions. In order to minimise the duplication where both lawyers/notaries and estate agents are involved in the same transaction, AML/CFT requirements will permit the acceptance of introduction certificates, where subject to certain criteria, it will be possible for one business to place reliance on customer due diligence already conducted by another business.
- 4.17 The AML/CFT Strategy Group also intends to specify that local property transactions that are subject to housing consent and that are approved and registered by the Royal Court are low risk, and so establish that reduced customer due diligence requirements will be acceptable. In the case of such transactions, customer due diligence might be limited to holding basic information about a customer (such as name and address).

4.17.1 Do you agree that this definition and approach for the estate agency sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.

HIGH VALUE GOODS DEALERS

- 4.18 The FATF Recommendations require that AML/CFT requirements be applied to dealers in precious metals and stones when they engage in cash transactions with their customers of €15,000 or more. The Second Directive, together with the Money Laundering Regulations 2003 that implemented the Directive in the UK, applied AML measures to a wider sector - to traders in any goods, when they receive in respect of any transaction, a payment in cash of €15,000 or more.
- 4.19 One possible option would be to prohibit dealers in precious metals and stones, or all high value goods dealers, from accepting cash payments (whether in a single transaction or linked transactions) of €15,000 or more. This option is not proposed, as the response from the Chamber has indicated that these sectors would like to retain the option to accept large payments in cash from customers. The Chamber did, however, indicate that its members had reported that such transactions were infrequent.
- 4.20 This consultation paper proposes that Jersey follow the EU and UK approach in this area, requiring all high value goods dealers - when accepting cash at, or in excess of, a threshold amount - to be subject to AML/CFT requirements. The substance of this approach is that AML/CFT requirements would **not** apply to a dealer operating a policy of specifically refusing to accept cash in excess of a threshold amount, but would otherwise require a dealer to:
- comply with the Money Laundering Order **from the time** that cash in excess of the threshold amount was accepted as payment for a good (or goods); and
 - to be registered with a relevant supervisory authority (such registration is the subject of a separate concurrent consultation paper³) **at the time** that cash was accepted.

³ Entitled "Overseeing compliance with legislation to detect and prevent money laundering and the financing of terrorism".

4.21 The threshold adopted by the FATF and EU is where cash of €15,000 or more is accepted in a single payment or series of linked payments. Law enforcement agencies in Jersey suggest that locally, some drug dealers are transferring their proceeds from Jersey by purchasing high value goods with cash which are then shipped out of the Island, and have suggested that a lower threshold, of £5,000, might be more appropriate.

4.21.1 Do you agree that this approach for dealers in high value goods enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.

4.21.2 Do you support the FATF threshold of €15,000 (or sterling equivalent), or a lower Jersey threshold of £5,000, for AML/CFT requirements to apply where dealers in high value goods accept cash? Please explain your view.

CASINOS

4.22 Whilst the operation of a casino in Jersey is prohibited⁴, it is possible for a Jersey company or limited liability partnership to operate a casino overseas - though the AML/CFT Strategy Group is not aware of any Jersey company or limited liability partnership undertaking such activities.

4.23 As a result, there is no absolute need to include casinos within Schedule 2 at this time. However, an advantage of including casinos will be that the Island is better placed to demonstrate to international observers its desire to implement measures consistent with international requirements.

4.24 Should there be a change to the prohibition on the operation of casinos in Jersey, it is proposed that the Money Laundering Order would be amended to make specific provisions for such operations, in line with the expectations of the FATF Recommendations.

4.24.1 Do you agree that casinos should be listed in Schedule 2? Please explain your view.

PROFESSIONAL PRIVILEGE

4.25 As a consequence of extending the definition of financial services business in the legal and accountancy sectors, there will be a need to include provision in the Money Laundering Order (and subsequent replacement) for circumstances where professional privilege will prevent disclosure of information otherwise required by AML/CFT requirements.

4.26 The FATF has recognised this issue and notes that lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required under its Recommendations to report suspicious transactions - if the relevant information was obtained in circumstances where they are subject to legal professional privilege.

4.27 The FATF permits each jurisdiction to determine the matters that would fall under legal professional privilege and considers that this would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their

⁴ Whether it has a physical presence in Jersey or only makes use of Jersey web-hosting or disaster recovery facilities.

clients: (a) in the course of ascertaining the legal position of their client; or (b) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings.

4.28 In the recitals to the Third Directive, the European Commission notes that legal advice is to remain the subject of professional privilege unless the legal advisor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer knows that the client is seeking legal advice for money laundering or terrorist financing purposes.

4.29 Appendix D sets out the provisions concerning professional privilege proposed for the draft Money Laundering (Jersey) Order 200-. These provisions are based on those included within the draft UK Money Laundering Regulations 2007, and relate to two circumstances: (1) where the lawyer or accountant is unable to satisfactorily complete the customer due diligence process; and (2) where the lawyer or accountant would otherwise be required to submit a suspicious activity report to the Joint Financial Crimes Unit.

4.29.1 Do you agree that this approach for providing for circumstances in which disclosure of information subject to professional privilege is not required enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.

5 - EXISTING SECTORS

REVISION TO THE SCOPE OF PRUDENTIALY REGULATED SECTORS SUBJECT TO SCHEDULE 2

Trust company businesses

- 5.1 The following trust and company administration activities are currently subject to Schedule 2: the business of providing trusteeship services (not being services as a trustee of an occupational pension scheme); the business of company formation; and the business of company administration. Trust company business defined in Article 2(3) of the Financial Services Law is not, however, specifically listed. Accordingly, it is proposed to add the latter definition to Schedule 2. It is also intended that the definition of trust company business in Article 2(3) of the Financial Services Law will be extended to refer to equivalent services provided in respect of legal bodies other than trusts and companies e.g. foundations and anstalts.
- 5.2 It is not proposed at this stage to delete existing references to trust and company administration activities in Schedule 2. However, should it be subsequently determined that the two sets of definitions cover the same population of activities, then the current wording will be removed.

General insurance business

- 5.3 Schedule 2 currently includes both long-term business and general insurance business, as defined by the Insurance Business Law, while international standards require only long-term and investment related insurance products to be subject to AML/CFT requirements. It is proposed to remove general insurance business from Schedule 2. This move is supported by the Jersey General Insurance Society.

Money service business

- 5.4 The JFSC has recently been consulting on the introduction of a light touch regulatory regime - through the Financial Services Law - for money service business, which includes bureaux de change, cheque cashers and money transmitters. These activities are already listed in Schedule 2, however, it is proposed that - for the time being - specific reference also be made to these activities through the reference to activities covered by the Financial Services Law.
- 5.5 In order to meet the updated definition for these activities set out in the FATF Recommendations, it is also proposed that the activity of transmitting or receiving funds by wire or other electronic means be expanded to cover transmitting or receiving funds (or any representations of monetary value) by any means. This latter definition is based on the definition contained within the UK Money Laundering Regulations 2003.
- 5.6 In line with the approach set out in a Feedback Paper on consultation responses to draft legislation to oversee money service business (see www.jerseyfsc.org/the_commission/general_information/press_releases/release193.asp), the JFSC proposes that the one-off transaction threshold, under which customer identification procedures are not required, be

lowered for money service business from £10,000 to £1,000. This proposal is intended to limit the vulnerability of money service businesses that will not be required to register under the Financial Services Law, and which might otherwise become attractive to and be targeted by criminals.

Fund services business

- 5.7 The JFSC is currently consulting on revisions to the Financial Services Law and the Collective Investment Funds Law, which will: add the list of functions for an unclassified collective investment fund (other than the function of a company issuing units) to a new list of financial service business activities in the Financial Services Law; and, in respect of unclassified funds, disapply these functions from the definition of a functionary (other than trustee of a unit trust, general partner of a limited partnership issuing units and company issuing units) in the Collective Investment Funds Law. Also, a new function of manager of a managed entity will be added to the new list of functionaries in the Financial Services Law.
- 5.8 Fund functionary activities are already listed in Schedule 2 as functions subject to the requirements of the Collective Investment Funds Law, however, it is proposed that Schedule 2 also include reference to the new list through the reference to activities covered by the Financial Services Law.
- 5.8.1 Do you agree that the proposed amendments to the definitions of regulated financial service business within Schedule 2 are appropriate? Please explain your view.**
- 5.8.2 Do you agree that it is appropriate to lower the threshold at which customers of a money service business are to be identified from £10,000 to £1,000 in a single or linked transaction? Please explain your view.**

EXCLUSIONS AND EXEMPTIONS UNDER REGULATORY LAWS

- 5.9 Whilst Schedule 2 clearly applies to a person conducting deposit-taking business, conducting insurance business, conducting trust company business, conducting investment business, or who is in the business of being a fund functionary, its application to a person that is able to benefit from an exemption from the application of a particular regulatory law (full or limited) which is set out in an Order under that law (an “**exemption**”), or not to be treated as carrying on such business – to the extent specified in a Schedule to a regulatory law (an “**exclusion**”) - is not clear.
- 5.10 For the purposes of the Proceeds of Crime Law, the JFSC’s view is that any person conducting deposit-taking business, conducting insurance business, conducting trust company business, conducting investment business, or who is in the business of being a functionary – all as defined in regulatory laws – will be subject to Schedule 2, irrespective of whether that person is able to benefit from an exemption or exclusion. This is because an exemption or exclusion does not change the underlying definition of business conducted and it is this underlying definition that is relevant for the purpose of Schedule 2.
- 5.11 However, it is apparent that, on a risk-based approach, it is unnecessary for every person or business which can benefit from an exemption or exclusion to be subject to Schedule 2.
- 5.12 Accordingly, the JFSC is proposing to exclude from the scope of Schedule 2, those businesses which are considered low-risk from an AML/CFT perspective. In most cases, this is because

the exemption or exclusion under a regulatory law relates to an activity which is being carried on as principal, although the Commission is also proposing to take out of the scope of Schedule 2 a number of other exempted or excluded activities which are otherwise considered low risk. These are listed in Appendix F. A full list of exemptions and exclusions under the regulatory laws is available from the JFSC upon request.

- 5.13 Business which is not considered low-risk from an AML/CFT perspective will remain subject to Schedule 2. Note that business subject to Schedule 2 must comply with the Money Laundering Order which sets out the measures that it must take to guard against money laundering and terrorist financing.

5.13.1 Do you agree with the JFSC's view? If you do not, please explain why.

5.13.2 Do you consider that any activities additional to those listed in Appendix F should be excluded from Schedule 2?

REVISION TO THE SCOPE OF UNREGULATED SECTORS SUBJECT TO SCHEDULE 2

Credit references

- 5.14 Schedule 2 presently includes the activity of providing credit references. However, this activity is not contained within the FATF list of sectors required to be subject to AML/CFT requirements, nor within the corresponding EU or UK lists. Neither does the AML/CFT Strategy Group consider that this activity is vulnerable to money laundering or terrorist financing. It is proposed that the activity of providing credit references is removed from Schedule 2.

Annex 1 to the EU Second Banking Coordination Directive

- 5.15 Schedule 2 lists a number of activities listed in Annex 1 to the EU Second Banking Coordination Directive (89/646/EEC), now replaced by the Banking Consolidation Directive (2006/48/EC). This list of activities broadly corresponds to the activities listed by the FATF in its definition of financial institutions. However, the FATF requires AML/CFT measures only to apply to the activities listed when they are conducted for third parties i.e. for customers, and not also when the business is performing those activities as principal. It is proposed to retain the list of activities in Annex 1 to the Banking Coordination Directive in Schedule 2, but only to the extent that the activities are performed for third parties.
- 5.16 It is also proposed to update the definitions in this list where the activities in Annex 1 to the EU Banking Directive (2006/48/EC) have been updated, and to extend the definitions where they do not clearly include all of the activities required by the FATF. For example, issuing and administering means of payment will explicitly refer to electronic money.

5.16.1 Do you agree that the proposed amendments to the definitions of unregulated financial services businesses within Schedule 2 are appropriate? Please explain your view.

ACTIVITIES CONDUCTED ON AN OCCASIONAL OR VERY LIMITED BASIS

- 5.17 Article 37(1) of the Proceeds of Crime Law requires procedures to be maintained by persons who carry on financial services business, and each of the sectors listed in Schedule 2 are defined in terms of a business activity. It follows from this that Schedule 2 (and therefore the Money Laundering Order) will not apply in circumstances where a particular activity is conducted otherwise than in the course of business.
- 5.18 In addition to this, the FATF Recommendations also provide that when a financial activity is carried out by a financial institution on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of AML/CFT measures is not necessary, either fully or partially. There is no similar provision for designated non-financial businesses and professions (casinos, estate agents, high value goods dealers, lawyers and accountants).
- 5.19 In line with the Third Directive, the UK has sought to provide a definition of what is meant by activity conducted on an occasional or very limited basis in its draft Money Laundering Regulations 2007 (Schedule 2, paragraph 1). In line with the FATF Recommendations, this definition only applies to credit and financial institutions, and not also to sectors such as lawyers, accountants, estate agents and high value goods dealers. The regime proposed in the UK would require anyone conducting an activity listed to be subject to AML/CFT requirements, but would enable persons meeting certain criteria to apply to the relevant licensing authority to become exempt. The criteria proposed by the UK are set out below. A credit or financial institution is to be considered as engaging in financial activity on an occasional or very limited basis if it fulfils all of the following criteria –
- (a) the institution's total turnover in respect of the financial activity does not exceed the amount prescribed in paragraph 1(1)(a) of Schedule 1 to the Value Added Tax Act 1994 [currently £61,000];
 - (b) the financial activity is limited in respect of transactions exceeding €1,000 to one per customer, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;
 - (c) the financial activity does not exceed 5% of the institution's total turnover;
 - (d) the financial activity is ancillary and directly related to the institution's main activity;
 - (e) the institution's main activity is not that of a person falling within regulation 3(1)(a) to (f) or (h) [i.e. the business' main activity is not an activity otherwise subject to AML/CFT requirements, with the exception of high value goods dealers]; and
 - (f) the financial activity is provided only to customers of the main activity and is not offered to the public.
- 5.20 It is not currently intended to provide for exemptions for business conducted on an occasional or very limited basis, given the difficulty and complexity involved in defining what is meant by "occasional or very limited". The AML/CFT Strategy Group's view is that any person that conducts financial services business should be subject to the requirements of the Money Laundering Order, and that where activities are just "occasional or very limited", that oversight requirements should reflect this.
- 5.20.1 Do you think that the AML/CFT Strategy Group should provide for persons (but not casinos, estate agents, high value goods dealers, lawyers and accountants) carrying on business on an occasional or very limited basis to be exempt from the application of Schedule 2? If so, how should "occasional or very limited" be measured?**

HANDBOOK FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM

- 5.21 At the time of the introduction of the Money Laundering Order, the JFSC issued Anti-Money Laundering Guidance Notes for the Finance Sector ("**Guidance Notes**"), to provide practical guidance for several specific sectors (both regulated and unregulated) as to how compliance with the requirements of the Money Laundering Order could be achieved. Article 37(8) of the Proceeds of Crime Law requires the Court to take into account such relevant guidance when considering whether there has been a breach of the Money Laundering Order. If no such guidance has been issued for a sector, Article 37(8) also allows the Royal Court to take into account guidance issued by another regulatory or representative body for that sector.
- 5.22 The JFSC's Consultation Paper No.4 2006 (Handbook for the prevention and detection of money laundering and terrorist financing) presented draft revised guidance, to replace the current Guidance Notes, in the form of a Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the "**Handbook**"). The Handbook will introduce regulatory requirements and provide guidance for sectors that are regulated and supervised by the JFSC. In the case of unregulated sectors, these regulatory requirements and guidance will be considered by the Royal Court to be relevant guidance.
- 5.23 However, it is acknowledged that for some less complex activities, such as those which do not involve handling or controlling customer assets or which do not involve ongoing relationships with customers, the level of detail contained in the Handbook may be unnecessary. A number of respondents to Consultation Paper No.4 2006 indicated that separate (or sector specific) guidance for such cases would be helpful. However, few of those respondents were from the sectors likely to be affected by such guidance. The AML/CFT Strategy Group would therefore welcome further views, particularly from those working in the additional sectors to be added to Schedule 2 (see 1.9), as to whether separate (or sector specific) guidance issued by the JFSC (or another designated supervisory authority⁵) would be useful.
- 5.23.1 Is separate or sector specific guidance required for the activities which you conduct? Please explain your views and list the activities conducted.**

⁵ See concurrent consultation paper entitled "Overseeing compliance with legislation to detect and prevent money laundering and the financing of terrorism".

6 – COST BENEFIT ANALYSIS

6.1 There are a number of **costs** associated with the proposals set out in this consultation paper:

6.1.1 For persons to be included in Schedule 2 for the first time (and thus subject to the requirements of the Money Laundering Order for the first time) there will be a need to review operational practices and policies to ensure that the following are in place:

- Identification procedures for new customers which will involve a risk assessment of the customer and obtaining evidence of the customer's identity.
- Record keeping procedures for evidence of identity and for transaction records.
- Reporting procedures for suspicious activity, including the appointment of a member of staff or a director as a reporting officer.
- Training for staff concerning AML/CFT requirements, and to recognise suspicious activity.
- Appropriate internal control procedures to prevent money laundering and terrorist financing, including the appointment of a member of staff or a director as AML/CFT compliance officer⁶.

6.1.2 The implementation of these new procedures will impose additional costs on businesses, in particular at the customer take-on stage in relation to obtaining evidence of customers' identity. Some respondents to the JFSC's Consultation Paper No. 4 2006 (Handbook for the prevention and detection of money laundering and terrorist financing) highlighted concerns related to increasing the cost burden on small business, and of the need for Jersey businesses to be able to compete with businesses based overseas.

6.1.3 Notwithstanding this, many legal and accountancy firms are connected with regulated entities which are already subject to AML/CFT requirements, or routinely introduce business or provide advice or other services to regulated entities, and so will already be familiar with the requirements. These sectors are more likely to already have in-house AML/CFT competence, and so may find the introduction of such requirements less onerous than other new sectors. The AML/CFT Strategy Group is aware that many businesses in these sectors are already applying measures required for their regulated businesses across the group, or are applying measures because these are already required by group entities based in the UK.

⁶ The requirement to appoint an AML/CFT compliance officer is included in the Money Laundering (Jersey) Order 200-.

6.2 There are a number of **benefits** associated with the proposals set out in this consultation paper:

6.2.1 The proposed legal framework is a step towards ensuring that Jersey comes into line with FATF Recommendations. Where AML/CFT requirements are not applied to the listed sectors, Jersey will be open to criticism for having an inadequate AML/CFT framework, and is likely to receive an adverse rating from the IMF when it assesses the requirements which Jersey has in place in the second quarter of 2008.

6.2.2 Once the framework is fully implemented, it should further reduce Jersey's vulnerability to abuse by money launderers and those wishing to finance terrorism. This will help to protect the Island's reputation, which is fundamental to the continuing success of the Island's finance industry, and, consequently, the Island's economy.

7 - SUMMARY OF QUESTIONS

REFERENCE	QUESTION
4.5.1	Do you agree that this definition for the legal sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.
4.10.1	Do you agree that this definition for the accountancy and audit sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.
4.17.1	Do you agree that this definition and approach for the estate agency sector enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.
4.21.1	Do you agree that this approach for dealers in high value goods enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.
4.21.2	Do you support the FATF threshold of €15,000 (or sterling equivalent), or a lower Jersey threshold of £5,000, for AML/CFT requirements to apply where dealers in high value goods accept cash? Please explain your view.
4.24.1	Do you agree that casinos should be listed in Schedule 2? Please explain your view.
4.29.1	Do you agree that this approach for providing for circumstances in which disclosure of information subject to professional privilege is not required enables Jersey to meet its obligations under the FATF Recommendations in a manner appropriate to local circumstances? Please explain your view.
4.32.2	Do you believe that any other sectors not listed in the proposals for the revised Schedule 2 are vulnerable to money laundering or terrorist financing and so should be considered for inclusion? Please explain your view.]
5.8.1	Do you agree that the proposed amendments to the definitions of regulated financial service business within Schedule 2 are appropriate? Please explain your view.
5.8.2	Do you agree that it is appropriate to lower the threshold at which customers are to be identified from £10,000 to £1,000 in a single or linked transaction? Please explain your view.
5.13.1	Do you agree with the JFSC's view? If you do not, please explain why.
5.13.2	Do you consider that any activities additional to those listed in Appendix F should be excluded from Schedule 2?
5.16.1	Do you agree that the proposed amendments to the definitions of unregulated financial services businesses within Schedule 2 are appropriate? Please

explain your view.

5.20.1

Do you think that the AML/CFT Strategy Group should provide for persons (but not casinos, estate agents, high value goods dealers, lawyers and accountants) carrying on business on an occasional or very limited basis to be exempt from the application of Schedule 2? If so, how should “occasional or very limited” be measured?

5.23.1

Is separate or sector specific guidance required for the activities which you conduct? Please explain your views and list the activities conducted.

APPENDIX A

LIST OF REPRESENTATIVE BODIES WHO HAVE BEEN SENT THIS CONSULTATION PAPER

- Institute of Directors
- Jersey Association of English Solicitors
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Motor Trades Federation
- Jersey Society of Chartered and Certified Accountants
- Jersey Taxation Society
- Law Society of Jersey

OTHER BODIES WHO HAVE BEEN SENT THIS CONSULTATION PAPER

- Jersey Business Venture
- Jersey Consumer Council

APPENDIX B

Policy proposals for a Revised Schedule 2 of the Proceeds of Crime (Jersey) Law 1999

A	Businesses regulated by the Jersey Financial Services Commission
1	Any deposit-taking business, as defined in Article 1 of the Banking Business (Jersey) Law 1991.
2	Any long term business, as defined in Article 1(1) of the Insurance Business (Jersey) Law 1996 (listed in Schedule 1 Part 1 of the Insurance Business (Jersey) Law 1996).
3	The business of being a functionary of a collective investment fund, as defined in Article 1 of the Collective Investment Funds (Jersey) Law 1988.
4	Any financial service business, as defined in Article 1(1) of the Financial Services (Jersey) Law 1998, with the exception of general insurance mediation business.
B	Non-financial businesses and professions
	Trust and company service providers
1	The business of providing trust and company services (not being a business specified above), including: <ul style="list-style-type: none"> (1) providing trusteeship services (not being services as a trustee of an occupational pension scheme); (2) forming companies or other legal persons and arrangements; and (3) administering companies or other legal persons and arrangements.
	Lawyers and accountants
2	The professional services conducted by notaries and other independent legal professionals when they participate (whether by acting for or on behalf of their client) or assist in the planning or execution of financial or property transactions concerning: <ul style="list-style-type: none"> (1) the buying and selling of real property or business entities; (2) the managing of client money, securities or other assets; (3) the opening or management of bank, savings or securities accounts; (4) the organisation of contributions necessary for the creation, operation or management of companies; or (5) the creation, operation or management of trusts, companies or similar structures. Independent legal professions excludes legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.
3	The business of: <ul style="list-style-type: none"> (1) providing external accountancy services; (2) providing advice about the tax affairs of another person; (3) providing audit services; or (4) providing insolvency services. External accountants excludes accountants employed by (a) public authorities or (b) undertakings which do not by way of business provide accountancy services to third parties. An auditor is any person eligible for appointment as a company auditor under Article 113

	<p>and Articles 113 A-E of the Companies (Jersey) Law 1991 who by way of business provides audit services.</p> <p>A person provides insolvency services if he, by way of business, accepts appointment as: a liquidator under Chapter 4 of Part 21 of the Companies (Jersey) Law 1991, as revised; an insolvency manager appointed under the Limited Liability Partnerships (Jersey) Law 1997 (as modified by the Limited Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998; or as a agent of an official functionary appointed in the case of a <i>remise de biens, cession, or désastre</i>.</p>
	Other businesses and professions
4	The business of providing estate agency services for or on behalf of customers concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property) whether the property is situated in Jersey or overseas.
5	High value dealers - meaning persons who trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least €15,000 (or sterling equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.
6	Casinos (which also includes internet casinos).
C	Other financial businesses and professions
	The business of engaging in any of the following activities for third parties (not being an activity specified elsewhere in the Schedule 2):
1	Acceptance of deposits and other repayable funds from the public.
2	Lending, including: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3	Financial leasing.
4	Money transmission services.
5	Issuing and administering means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money).
6	Guarantees and commitments.
7	Trading for the account of customers in -
	a) Money market instruments (such as cheques, bills, certificates of deposit, derivatives etc),
	b) Foreign exchange,
	c) Futures and options (financial and commodity),
	d) Exchange and interest rate and index instruments, or
	e) Transferable securities.
8	Participation in securities issues and the provision of services related to such issues,
9	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings,

10	Money broking,
11	Portfolio management and advice,
12	Safekeeping and administration of securities.
13	Safe custody services.
14	Otherwise investing, administering or managing funds or money on behalf of other persons.

APPENDIX C

Current Schedule 2 of the Proceeds of Crime (Jersey) Law 1999

(Article 36(1) and (2))

Financial services business

1. Any deposit-taking business, as defined in Article 1 of the Banking Business (Jersey) Law 1991.
2. Any insurance business to which Article 5 of the Insurance Business (Jersey) Law 1996 applies.
3. The business of being a functionary of a collective investment fund, as defined in Article 1 of the Collective Investment Funds (Jersey) Law 1988.
4. Any investment business, as defined in Article 1(1) of the Financial Services Business (Jersey) Law 1998.
5. The business of providing trusteeship services (not being services as a trustee of an occupational pension scheme).
6. The business of company formation.
7. The business of company administration.
8. The business of a bureau de change.
9. The business of providing cheque cashing services.
10. The business of transmitting or receiving funds by wire or other electronic means.
11. The business of engaging in any of the following activities within the meaning of the Annex to the Second Banking Coordination Directive (No. 89/646/EEC) (not being a business specified in any of paragraphs 1 to 10 (inclusive)) –
 - a) the acceptance of deposits and other repayable funds from the public;
 - b) lending;
 - c) financial leasing;
 - d) money transmission services;
 - e) the issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);

- f) guarantees and commitments;
- g) trading for one's own account or for the account of customers in –
 - i) money market instruments (such as cheques, bills and CDs);
 - ii) foreign exchange;
 - iii) financial futures and options;
 - iv) exchange and interest rate instruments; or
 - v) transferable securities;
- h) participation in securities issues and the provision of services related to such issues;
- i) advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
- j) money broking;
- k) portfolio management and advice;
- l) the safekeeping and administration of securities;
- m) credit reference services; and
- n) safe custody services.

APPENDIX D

Proposed provisions concerning professional privilege

(1) Where the lawyer or accountant is unable to satisfactorily complete the customer due diligence process.

The prohibition from acting for a customer where the business has been unable to satisfactorily complete customer due diligence procedures (Article 12(5) and Article 27 of the draft Money Laundering (Jersey) Order 200-, May 2006 consultation draft) will not apply where notaries, other independent legal professionals, auditors, external accountants or tax advisors are in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, legal proceedings, including advice on instituting or avoiding proceedings.

(2) Where the lawyer or accountant would otherwise be required to submit a suspicious activity report to the Joint Financial Crimes Unit.

The procedures established under Article 25 of the draft Money Laundering (Jersey) Order 200-(May 2006 consultation draft) do not require notaries, other independent legal professionals, auditors, external accountants or tax advisors to disclose information to a designated police or customers officer (i.e. to the Joint Financial Crimes Unit) where the information was received in the course of ascertaining the legal position for the client or performing the task of defending or representing that client in, or concerning, legal proceedings, including advice on instituting or avoiding proceedings. These provisions do not apply where the information or other matter is communicated or given to the notary, other independent legal professional, auditor, external accountant or tax advisor with the intention of furthering a criminal purpose.

APPENDIX E

Comparison of definitions of sectors subject to AML/CFT requirements

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
Any deposit-taking business, as defined in Article 1 of the Banking Business (Jersey) Law 1991.	Acceptance of deposits and other repayable funds from the public. This also captures private banking.	Credit institution means: (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or (b) an electronic money institution within the meaning of Directive 2000/46/EC.	Credit institution means: (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.
Any long term business, as defined in Article 1(1) of the Insurance Business (Jersey) Law 1996 (listed in Schedule 1 Part 1 of the Insurance Business (Jersey) Law 1996).	Underwriting and placement of life insurance and other investment related insurance. This applies both to insurance undertakings and to insurance intermediaries (agents and brokers).	An insurance company duly authorised in accordance with the life assurance consolidation directive.	An insurance company duly authorised in accordance with the life assurance consolidation directive.
The business of being a functionary of a collective investment fund, as defined in Article 1 of the Collective Investment Funds (Jersey) Law 1988.	Participation in securities issues and the provision of financial services related to such issues Individual and collective portfolio management	A collective investment undertaking marketing it units or shares	A collective investment undertaking marketing it units or shares
Any financial service business, as defined in Article 1(1) of the Financial Services (Jersey) Law 1998, with the exception of general insurance mediation business. [i.e. investment business, trust company business and money services business – also CIF functionary business]	Trading in [various securities and instruments] Individual and collective portfolio management Otherwise investing, administering or managing funds or money on behalf of other persons	An investment firm as defined in point 1 of Article 4(1) of the markets in financial instruments directive. An insurance intermediary as defined in Article 2(5) of directive 2002/92/EC, with the exception of intermediaries mentioned in Article 2(7) of that directive, when they act in respect of life insurance and other investment-related services.	An investment firm as defined in point 1 of Article 4(1) of the markets in financial instruments directive. An insurance intermediary as defined in Article 2(5) of directive 2002/92/EC, with the exception of intermediaries mentioned in Article 2(7) of that directive, when they act in respect of life insurance and other investment-related services.

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
<i>Trust and company service providers</i>	<i>Trust and company service providers</i>	<i>Trust and company service providers</i>	<i>Trust and company service providers</i>
Any financial service business, as defined in Article 1(1) of the Financial Services (Jersey) Law 1998, with the exception of general insurance mediation business. A person carries on trust company business if the person carries on a business that involves the provision of company administration services or trustee or fiduciary services and in the course of providing those services the person provides any of the services specified in paragraph (4).	Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:	"Trust or company service provider" means any person who by way of business provides any of the following services to third parties:	"Trust and company service providers" means any natural or legal person which by way of business provides any of the following services to third parties:
a) acting as a company or partnership formation agent;	Acting as a formation agent of legal person	Forming companies or other legal persons.	Forming companies or other legal persons;
b) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company;	Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons	Acting, or arranging for another person to act as a) a director or secretary of a company; b) as a partner of a partnership; or c) in a similar position in relation to other legal persons	Acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
c) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership;	Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons	Acting, or arranging for another person to act as a) a director or secretary of a company; b) as a partner of a partnership; or c) in a similar position in relation to other legal persons	Acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
d) acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;	Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons	Acting, or arranging for another person to act as a) a director or secretary of a company; b) as a partner of a partnership; or c) in a similar position in relation to other legal persons	Acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
e) providing a registered office or business address for a company or partnership;	Providing a registered office; business address or accommodation, correspondence or administrative address for a company a partnership or any other legal person or arrangement.	Providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement.	Providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
f) providing an accommodation, correspondence or administrative address for a company, a partnership or for any other person;	Providing a registered office; business address or accommodation, correspondence or administrative address for a company a partnership or any other legal person or arrangement.	Providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement.	Providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
g) acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust;	Acting as (or arranging for another person to act as) a trustee of an express trust	Acting, or arranging for another person to act as a trustee of an express trust or similar legal arrangement	Acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
h) acting as or fulfilling or arranging for another person to act as shareholder or unitholder as a nominee for another person.	Acting as (or arranging for another person to act as) a nominee shareholder for another person.	Acting, or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market which is subject to disclosure requirements consistent with community legislation or equivalent international standards.	Acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;
The business or providing trust and company services (not being a business specified above), including: 1) providing trusteeship services (not being services as a trustee of an occupational pension scheme); 2) forming companies or other legal persons or arrangements; 3) administering companies or other legal persons or arrangements.	-	-	-

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
<i>Money services business</i>	<i>Money services business</i>	<i>Money services business</i>	<i>Money services business</i>
The business of money service business, i.e. engaging in the following activities: (a) a bureau de change; (b) providing cheque cashing services; (c) transmitting or receiving funds (or any representation of monetary value) by any means; (d) engaging in money transmission services..	Money and currency changing	Money service business means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers.	Financial institution means an undertaking which carries out one or more of the activities listed in points 2-12 and 14 of the banking consolidation directive, including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices.
Money transmission services	The transfer of money or value. This applies to financial activity in both the formal or informal sector e.g. alternative remittance activity. It does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds.	Money transmission services	Money transmission services

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
Other financial businesses and professions	FATF definition of financial institution	Annex I activities Banking Consolidation Directive (2006/48/EC)	Annex I activities Banking Consolidation Directive (2006/48/EC)
The business of engaging in any of the following activities for third parties (not being an activity specified elsewhere in the Second Schedule):	"Financial institution" means any person or entity who conducts as a business one or more of the following activities on behalf of a customer.	"Financial institution" means: (a) an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2006/48/EC.	"Financial institution" means: (a) an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2000/12/EC (superseded by 2006/48/EC), including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices.
Acceptance of deposits and other repayable funds from the public.	Acceptance of deposits and other repayable funds from the public. This also captures private banking.	An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.	An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.
Lending, including: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).	Lending. This includes inter alia: consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting).	Lending, including: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).	Lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting)
Financial leasing	Financial leasing. This does not extend to financial leasing arrangements in relation to consumer products.	Financial leasing	Financial leasing
Money transmission services	The transfer of money or value. This applies to financial activity in both the formal or informal sector e.g. alternative remittance activity. It does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds.	Money transmission services	Money transmission services

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
Issuing and administering means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money)	Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).	Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).	Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)
Guarantees and commitments	Financial guarantees and commitments.	Guarantees and commitments	Guarantees and commitments
Trading for the account of customers in –	Trading in-	Trading for own account or for account of customers in:	Trading for own account or for account of customers in:
a) Money market instruments (such as cheques, bills, certificates of deposit, derivatives etc),	Money market instruments (cheques, bills, CDs, derivatives etc).	Money market instruments (cheques, bills, certificates of deposit, etc).	(a) money market instruments (cheques, bills, certificates of deposit, etc.);
b) Foreign exchange	Foreign exchange	Foreign exchange	Foreign exchange;
c) Futures and options (both financial and commodity)	Commodity futures trading	Financial futures and options	Financial futures and options
d) Exchange and interest rate and index instruments	Exchange, interest rate and index instruments.	Exchange and interest-rate instruments	Exchange and interest rate instruments
e) Transferable securities	Transferable securities	Transferable securities	Transferable securities
Participation in securities issues and the provision of services related to such issues	Participation in securities issues and the provision of financial services related to such issues	Participation in securities issues and the provision of services related to such issues.	Participation in securities issues and the provision of services related to such issues
Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	-	Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.	Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings
Money broking	-	Money broking	Money broking
Portfolio management and advice	Individual and collective portfolio management	Portfolio management and advice	Portfolio management and advice

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
Safekeeping and administration of securities.	Safekeeping and administration of cash or liquid securities on behalf of other persons.	Safekeeping and administration of securities	Safekeeping and administration of securities
Safe custody services.	-	Safe custody services.	Safe custody services.
Otherwise investing, administering or managing funds or money on behalf of other persons	Otherwise investing, administering or managing funds or money on behalf of other persons	-	-
Casinos (which also includes internet casinos).	Casinos (which also includes internet casinos) – when customer engage in financial transactions equal to or above EUR 3,000.	Casino has the meaning given by section 7(1) of the Gambling Act 2005 Identification requirements are to be applied either on entry or when customers purchase or exchange EUR 2,000 or more.	Casinos. Identification requirements will only apply when customers purchase or exchange EUR 2,000 or more.
The business of providing estate agency services for or on behalf of customers concerning the buying or selling of freehold or leasehold property (including commercial and agricultural property).	Real estate agents – when they are involved in transactions for their clients concerning the buying and selling of real estate.	Estate agent means a person undertaking estate agency work within the meaning given by Section 1 of the Estate Agents Act 1979 but excludes persons employed by another person undertaking such work.	Real estate agents
High value dealers means persons who trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.	Dealers in precious metals and in precious stones – when they engage in any cash transaction with a customer equal to or above the applicable threshold.	High value dealers means persons who trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.	Other natural or legal persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15,000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.
The business of providing website hosting services for third parties.	-	-	-

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
Lawyers and accountants	Lawyers and accountants	Lawyers and accountants	Lawyers and accountants
<p>The professional services conducted by notaries and other independent legal professionals when they participate (whether by acting for or on behalf of their client) or assist in the planning or execution of financial or property transactions concerning:</p> <ol style="list-style-type: none"> the buying and selling of real property or business entities; the managing of client money, securities or other assets; the opening or management of bank, savings or securities accounts; the organisation of contributions necessary for the creation, operation or management of companies; or the creation, operation or management of trusts, companies or similar structures. <p>Independent legal professions excludes legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.</p>	<p>Lawyers, notaries and other independent legal professionals – when they prepare for or carry out transactions for their client concerning the following activities:</p> <ul style="list-style-type: none"> Buying and selling of real estate Managing of client money, securities or other assets Management of bank, savings or securities accounts Organisation of contributions for the creation, operation or management of companies Creation, operation or management of legal persons or arrangements, and buying or selling of business entities. <p>This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.</p>	<p>Notaries and other independent legal professionals when they participate (whether by acting for or on behalf of their client) or assist in the planning or execution of financial or property transactions concerning:</p> <ol style="list-style-type: none"> the buying and selling of real property or business entities; the managing of client money, securities or other assets; the opening or management of bank, savings or securities accounts; the organisation of contributions necessary for the creation, operation or management of companies; or the creation, operation or management of trusts, companies or similar structures. <p>Independent legal professions excludes legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.</p>	<p>Notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:</p> <ul style="list-style-type: none"> the buying and selling of real property or business entities; the managing of client money, securities or other assets; the opening or management of bank, savings or securities accounts; the organisation of contributions necessary for the creation, operation or management of companies; or the creation, operation or management of trusts, companies or similar structures.
<p>The business of:</p> <ol style="list-style-type: none"> providing external accountancy services; providing advice about the tax affairs of another person; 	<p>Accountants - when they prepare for or carry out transactions for their client concerning the following activities:</p> <ul style="list-style-type: none"> Buying and selling of real 	<p>Accountant: any person who by way of business provides accountancy services.</p> <p>External accountants excludes</p>	<p>Auditors, external accountants and tax advisors, in the exercise of their professional activities.</p>

Policy for POCL Schedule 2	FATF Recommendations	Draft UK ML Regulations 2007	EU Third Directive
<p>3) providing audit services; 4) providing insolvency services.</p> <p>External accountants excludes accountants employed by (a) public authorities or (b) undertakings which do not by way of business provide accountancy services to third parties.</p> <p>An auditor is any person eligible for appointment as a company auditor under Article 113 and Articles 113 A-E of the Companies (Jersey) Law 1991 who by way of business provides audit services.</p>	<p>estate</p> <ul style="list-style-type: none"> • Managing of client money, securities or other assets • Management of bank, savings or securities accounts • Organisation of contributions for the creation, operation or management of companies • Creation, operation or management of legal persons or arrangements, and buying or selling of business entities. <p>This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.</p>	<p>accountants employed by (a) public authorities or (b) undertakings which do not by way of business provide accountancy services to third parties.</p> <p>Auditor: any person eligible for appointment as a company auditor under section 25 of the Companies Act 1989 who by way of business provides audit services.</p> <p>Tax advisor means any person who by way of business provides advice about the tax affairs of another person.</p> <p>Insolvency practitioners.</p>	

APPENDIX F

List of proposed 'exclusions' and 'exemptions' from scope of Schedule 2

<u>Sector references – abbreviations:</u> InvB = Investment business TCB = Trust company business BB = Banking business CIF = Collective investment fund business InsB = Insurance business	<u>Statutory references - abbreviations:</u> FSJL : Financial Services (Jersey) Law 1998 IBJL: Insurance Business (Jersey) Law 1996 CIFJL: Collective Investment Funds (Jersey) Law 1988 BBJL: Banking Business (Jersey) Law 1991
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Sector	Title of exclusion/ exemption	Statutory reference	Notes
InvB	Newspaper, broadcasting and information services	FSJL: Schedule 2, Part 1, paragraph 1	
InvB	Dealing as principal	FSJL: Schedule 2, Part 1, paragraph 4	
InvB	Instruments creating or acknowledging indebtedness	FSJL: Schedule 2, Part 1, paragraph 7	Will be taken out of the scope of Schedule 2 only when done as principal
InvB	Connected companies and joint enterprises	FSJL: Schedule 2, Part 1, paragraph 8	Connected companies will be taken outside of the scope of Schedule 2 Joint enterprises will stay within the scope of Schedule 2
InvB	Issuing of shares, debentures, etc.	FSJL: Schedule 2, Part 1, paragraph 10	
InvB	Discretionary investment management by company directors	FSJL: Schedule 2, Part 1, paragraph 14	
InvB	Investment advice between directors	FSJL: Schedule 2, Part 1, paragraph 15	
InvB	Investment advice given by protectors	FSJL: Schedule 2, Part 1, paragraph 16	Will be taken outside of the scope of Schedule 2 except when done by way of business
InvB	Certain overseas persons	Financial Services (Investment Business (Overseas Persons - Exemption)) (Jersey) Order 2001	
TCB	Address providers	Financial Services (Trust Company Business (Exemptions))(Jersey) Order 2000	
TCB	Connected company	Financial Services (Trust Company Business (Exemptions))(Jersey) Order 2000	
TCB	Introducer	Financial Services (Trust Company Business (Exemptions))(Jersey) Order 2000	
TCB	Director	Financial Services (Trust Company Business (Exemptions))(Jersey) Order	

Sector	Title of exclusion/ exemption	Statutory reference	Notes
		2000	
TCB	Director – registered person	Financial Services (Trust Company Business (Exemptions))(Jersey) Order 2000	
TCB	Liquidators and trustees in bankruptcy of persons other than registered persons	Financial Services (Trust Company Business (Exemptions))(Jersey) Order 2000	
TCB	Recruitment agents	Financial Services (Trust Company Business (Exemptions))(Jersey) Order 2000	
TCB	Overseas person	Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000	
TCB	Unit holding nominee company	Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000	
TCB	Electronic communications service providers	Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000	
TCB	Private protector company	Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001	
TCB	Investment company subsidiary	Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001	
TCB	Connected Persons	Financial Services (Trust Company Business (Exemptions No. 4)) (Jersey) Order 2001	
BB	States of Jersey	BBJL: Article 8(2)	
BB	Central banks of the EU	BBJL: Article 8(2)	
BB	National Savings Bank	BBJL: Article 8(2)	
InsB	Certain insurance business carried on by Lloyds of London	Article 5(5)(a) of the IBJL	
InsB	Certain long term and general business exemptions	Insurance Business (General Provisions) (Jersey) Order 1996	
InsB	General business (benefit in kind) exemptions	Insurance Business (General Provisions) (Jersey) Order 1996	

APPENDIX G

List of reference documents (with hyperlinks)

Proceeds of Crime (Jersey) Law 1999

(http://www.jerseylegalinfo.je/Law/display.aspx?url=lawsinforce%5cconsolidated%5c08%5c08.780_ProceedsofCrimeLaw1999_RevisedEdition_1January2006.htm)

Money Laundering (Jersey) Order 1999

(http://www.jerseylegalinfo.je/Law/display.aspx?url=lawsinforce%5cconsolidated%5c08%5c08.780.30_MoneyLaunderingOrder1999_RevisedEdition_1January2006.htm)

EU Second Money Laundering Directive (2001/97/EC)

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0097:EN:HTML>)

EU Third Money Laundering Directive (2005/60/EC)

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:01:EN:HTML>)

UK Money Laundering Regulations 2003 (2003 No. 3075)

(<http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=money+lauding+regulations&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=906987&ActiveTextDocId=906987&filesize=119590>)

UK consultation on draft Money Laundering Regulations 2007

(http://www.hm-treasury.gov.uk/consultations_and_legislation/money_laundering_directive/consult_thirdmoney_2007.cfm)

FATF Forty Recommendations on Money Laundering and Terrorist Financing

(http://www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html#40recs)

FATF Methodology for Countries and Assessors

(<http://www.fatf-gafi.org/dataoecd/14/53/38336949.pdf>)

Consultation Paper No.4 2006 on the Handbook for the prevention and detection of money laundering and the financing of terrorism

(http://www.jerseyfsc.org/pdf/hbk_consultation%20paper_04.pdf)