



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

**CONSULTATION PAPER
NO. 2 2007**

OVERSEEING COMPLIANCE WITH LEGISLATION TO DETECT AND PREVENT MONEY LAUNDERING AND THE FINANCING OF TERRORISM

**A proposed legal framework to oversee business and
activities covered by Schedule 2 of the Proceeds of Crime
(Jersey) Law 1999**

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 Andrew Le Brun 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 (the “**Proceeds of Crime Law**”).
- 1.2 In particular, in 2003 the Financial Action Task Force (the “**FATF**”), the body for setting international standards for combating money laundering and the financing of terrorism (“**AML/CFT**”), issued a revised version of its 40 Recommendations (the “**FATF Recommendations**”) - last updated in October 2004.
- 1.3 To meet FATF Recommendations, Jersey must implement a mechanism to enable a “supervisory authority” to effectively monitor, and ensure compliance by, persons conducting financial services business and activities listed in Schedule 2 (“**Schedule 2**”) of the Proceeds of Crime Law - with legislation in place in Jersey to counter money laundering and the financing of terrorism (“**AML/CFT legislation**”)¹.

WHAT IS PROPOSED AND WHY?

- 1.4 Currently only those persons² that are prudentially supervised by the Jersey Financial Services Commission (the “**JFSC**”) under one or more of the four regulatory laws³ are overseen for compliance with AML/CFT legislation. Consequently, certain types of business and activity that are currently listed in Schedule 2 are not presently overseen. In addition, to meet FATF Recommendations, persons conducting certain additional categories of business or activity will need to be added to Schedule 2 and accordingly be overseen by a supervisory authority. The proposed additions to Schedule 2 are the subject of a separate consultation paper⁴.
- 1.5 This consultation paper seeks views on a proposed legal framework which, in summary, would:
 - provide for the Minister for Treasury & Resources to designate, where certain criteria were met, one or more supervisory authorities to oversee compliance by persons conducting a Schedule 2 business or activity;

¹ The Money Laundering (Jersey) Order 1999 (and subsequent replacement) and Regulatory Requirements set out in the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism - to be issued by the Jersey Financial Services Commission (or similar requirements and guidance issued by a designated supervisory authority).

² For the purposes of this consultation paper “person” is primarily treated as a non-natural person (such as a company) although this does not preclude its application to natural persons as well.

³ The Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988, the Financial Services (Jersey) Law 1998 and the Insurance Business (Jersey) Law 1996.

⁴ Entitled “Revision to the definition of financial services business”.

- require all persons proposing to conduct a Schedule 2 business or activity to register with a designated supervisory authority - before conducting such activity or business;
- require applicants for certain categories of Schedule 2 business or activity to be subject to satisfactory vetting by a designated supervisory authority before registration;
- make it a criminal offence for a person to conduct a Schedule 2 business or activity without being registered with a designated supervisory authority;
- provide each designated supervisory authority with the power to set requirements and issue guidance to supervised persons to set out how they should meet their obligations under AML/CFT legislation; and
- provide each designated supervisory body with powers to conduct off-site and on-site examinations, to take investigatory action, and to apply sanctions, where necessary (in addition to any powers and sanctions that might already be available to that designated body under other legislation).

1.6 Transitional provisions would be introduced to give persons already conducting a Schedule 2 business or activity at the time the legal framework came into force a set period in which to apply for registration. Such persons would be permitted to lawfully continue conducting such a business or activity whilst their application was being considered. In addition, businesses already subject to prudential oversight by the JFSC would be “grandfathered” (see 5.10).

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 European Union (the “EU”).

WHO WILL OVERSEE FOR COMPLIANCE?

1.9 This consultation paper does not address the issue of which authority or authorities would be designated as supervisory authorities for which Schedule 2 business or activity. Nor does it consider what the depth and frequency of oversight should be, which will depend upon the risk of money laundering and terrorist financing in the relevant sector – both of which will be the subject of later consultation. (Note that a supervisory authority will be required to apply a risk-based approach to oversight. Consequently, the effect of the proposals on many sectors, e.g. estate agents and high value goods dealers, is unlikely to be significant.)

1.10 However, on the basis of a general presumption by the Council of Ministers, on economic grounds, against establishing new statutory bodies in Jersey to act as supervisory authorities, it is likely that existing bodies (including in appropriate cases, a self regulatory organisation) will be designated as oversight bodies for persons conducting a business or activity set out in Schedule 2. Before designation such bodies would need to meet the criteria referred to in 5.5 and be content to take on such an oversight role.

WHO WOULD BE AFFECTED?

1.11 The proposed legal framework would affect two categories of person (and their auditors⁵).

1.12 The first category is those persons conducting the following business or activities already listed in Schedule 2 but which are not presently subject to oversight for compliance with AML/CFT legislation⁶ in respect of that particular business or activity, namely:

- money service businesses⁷ (bureaux de change, money transmitters and cheque cashers);
- lenders;
- providers of finance leases;
- issuers and administrators of means of payment (such as credit/debit cards, travellers' cheques, money orders, bankers' drafts, and electronic money);
- providers of guarantees and commitments;
- traders for the account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments or transferable securities;
- those who participate in securities issues and provide services related to such issues;
- those who provide advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;

⁵ See paragraph 5.35.

⁶ Note that some persons conducting a business or activity in the list might already be prudentially supervised by the JFSC - under one of the four regulatory laws - in respect of some other business conducted (eg, a bank which is prudentially supervised for deposit-taking but which also provides guarantees and commitments). In such cases, the JFSC will already consider how the person complies with its obligations under AML/CFT legislation but the JFSC's focus in so doing would normally be on the prudentially supervised side of the business and would not generally extend to that part of the business which was not prudentially supervised. This paper does not consider how the JFSC will oversee for compliance of business and activities that are not prudentially supervised. This will be covered by later consultation.

⁷ Legislation is shortly to be presented to the Minister for Economic Development to provide for the prudential supervision of money service businesses by the JFSC under the Financial Services (Jersey) Law 1998 - where turnover (as defined) is £300,000 or more.

- money brokers;
- providers of safe keeping and administration of securities;
- providers of safe custody services;
- those who otherwise invest, administer or manage funds or money on behalf of other persons; and
- certain persons who can benefit from an exclusion or an exemption from one of the four regulatory laws – and which are therefore not subject to prudential oversight⁸.

1.13 The second category is persons carrying on the following business or activities which it is proposed to add to Schedule 2, namely:

- casinos (including internet casinos);
- estate agents when involved in transactions for their clients concerning the buying and selling of real estate;
- high value goods dealers when accepting payment in cash of €15,000 or more;
- lawyers, notaries and other independent legal professionals when participating in or assisting in the planning or execution of financial or property transactions; and
- external accountants, auditors, tax advisors and insolvency practitioners.

⁸ For more information, see the AML/CFT Strategy Group's concurrent consultation paper 'Revision to the definition of financial services business'. Note that where a person or activity has been granted an exclusion or exemption under one of the four regulatory laws then: (i) there is no statutory provision for prudential oversight in the case of business that is subject to an exclusion or unlimited exemption; and (ii) as a matter of policy, there is provision for prudential oversight only on an exceptional basis for those subject to a limited exemption.

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 issue instructions to the Law Draftsman to prepare draft legislation to implement the oversight framework set out in this paper. Once available, the draft legislation will be put out to consultation.

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 BACKGROUND

FINANCIAL ACTION TASK FORCE

- 4.1 To meet FATF Recommendations 23 and 24, Jersey must implement a mechanism to enable one or more “supervisory authorities” to effectively monitor and ensure compliance by persons who conduct the business or activities included (or to be included) in Schedule 2 with the Island’s AML/CFT legislation.
- 4.2 Recommendations 23 and 24 are reproduced at Appendix B.

THE EUROPEAN UNION (“EU”)

- 4.3 In October 2005, the EU adopted the Third Money Laundering Directive⁹. The Directive updates EU legislation in line with the FATF Recommendations and aims to harmonise AML/CFT standards across Europe.
- 4.4 Amongst other things, the Directive requires “competent authorities”¹⁰ in each Member State to effectively monitor and to take the necessary measures to ensure that the persons covered by the Directive comply with their obligations to take measures to detect and prevent money laundering and the financing of terrorism.
- 4.5 In addition, in line with FATF Recommendations, Member States must require the natural persons who own or direct the affairs of an entity conducting certain specified business or activities to be subject to some form of “fit and proper test” by a competent authority. The Recitals to the Directive indicate that, as a minimum, the criteria for such a test should reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes.
- 4.6 Member States must transpose the Directive into domestic legislation by 15 December 2007.

THE UNITED KINGDOM (“UK”)

- 4.7 In January 2007, Her Majesty’s Treasury (“HMT”) issued a consultation paper on draft “Money Laundering Regulations 2007” (the “**UK Regulations**”)¹¹, the United Kingdom legislation that will implement the Third Money Laundering Directive.
- 4.8 Amongst other things, the UK Regulations:

- set out provisions to detect and prevent money laundering and the financing of terrorism;

⁹ Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

¹⁰ That is, a regulatory or supervisory body.

¹¹ See http://www.hm-treasury.gov.uk/consultations_and_legislation/money_laundering_directive/consult_thirdmoney_2007.cfm

- designate different “supervisory authorities” to oversee various business sectors and activities (see below);
- require a supervisory authority to monitor the persons for whom it is the supervisory authority and take the necessary measures to ensure their compliance with the UK Regulations;
- require persons conducting a specified business or activity to meet a “fit and proper” test; and
- provide supervisory authorities with various investigative and enforcement powers (the latter to include civil fining powers).

4.9 In deciding which supervisory bodies should supervise which businesses or activities, HMT has indicated that the UK Government’s aim is that persons subject to the UK Regulations are only subject to one supervisory authority for the purposes of ensuring compliance with the UK Regulations. The UK has decided to use existing authorities rather than establish any new supervisory authorities.

4.10 In broad terms, responsibility would be allocated as follows:

Sector	Supervisory authority
<ul style="list-style-type: none"> • Banks and building societies • Investment firms • Insurance companies • Mortgage lenders • Asset managers • Trust and company service providers (some) 	<ul style="list-style-type: none"> • Financial Services Authority
<ul style="list-style-type: none"> • Consumer lenders • Estate agents 	<ul style="list-style-type: none"> • Office of Fair Trading
<ul style="list-style-type: none"> • Lawyers 	<ul style="list-style-type: none"> • Law Societies • Bar Councils
<ul style="list-style-type: none"> • Accountants 	<ul style="list-style-type: none"> • Professional bodies (eg, the Institute of Chartered Accountants in England and Wales)
<ul style="list-style-type: none"> • High value dealers • Money service businesses • Trust and company service providers (some) 	<ul style="list-style-type: none"> • Her Majesty’s Revenue and Customs
<ul style="list-style-type: none"> • Casinos 	<ul style="list-style-type: none"> • Gambling Commission

GUERNSEY AND THE ISLE OF MAN

4.11 Both jurisdictions are considering how to implement a mechanism to respond to the FATF Recommendations.

4.12 In Guernsey, it is proposed to:

- Introduce a registration scheme for financial services businesses that are not regulated by the Guernsey Financial Services Commission (the “GFSC”) – referred to as other financial services businesses (“OFSBs”) - but to exempt from registration any business

that is carried out on an occasional or very limited basis. This is expected to exclude a number of OFSBs from having to register with the GFSC (at a cost of £600).

- Require controllers, partners, directors and managers of OFSBs to be “fit and proper”, and to allow the GFSC (and others) to apply to the Royal Court of Guernsey for disqualification of any person employed by an OFSB from performing any function, any specified function, or any specified description of a function, where that person is considered by the Court to be other than fit and proper. It is also proposed that the Royal Court would have the power to wind up an OFSB.
- Introduce legislation to provide the GFSC with a power to require all OFSBs to provide such information and documents as it reasonably requires in order to determine that there is compliance with Regulations made under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 (the “**Guernsey Proceeds of Crime Law**”).
- Allow the GFSC to impose conditions on the registration of OFSBs, to suspend or revoke an OFSB’s registration, to appoint an inspector to investigate and report on matters related to compliance by OFSBs with Regulations made under the Guernsey Proceeds of Crime Law.

4.13 No proposal is contained in this consultation paper to provide for an exemption from registration along the lines proposed in Guernsey, given:

- the difficulty and complexity involved in defining what is meant by “occasional or very limited”; and
- that the FATF Recommendations do not provide, in any event, for such a restriction to be applied to casinos, estate agents, high value goods dealers, lawyers, and accountants.

4.14 The AML/CFT Strategy Group’s view is that any person that conducts a business or activity listed in Schedule 2 should be required to register, and that where activities are just “occasional or very limited”, that this should be reflected in the extent of oversight (and any fee to be paid upon registration and thereafter).

5 - THE PROPOSED FRAMEWORK

INTRODUCTION

- 5.1 As described earlier, to meet FATF Recommendations, Jersey must implement a mechanism to enable one or more “supervisory authorities” to effectively monitor, and ensure compliance by, persons conducting a business or activity listed in Schedule 2 with AML/CFT legislation. This section describes the proposed legal framework that would provide for such persons to be overseen by a designated supervisory authority.
- 5.2 The proposed framework would be established either by a new law or by way of regulations under the Proceeds of Crime Law. Either method is likely to take the same amount of time to enact, not least because the Proceeds of Crime Law would need to be amended to insert an enabling article - pursuant to which the regulations could be issued.
- 5.3 The proposed legal framework would contain the provisions set out below. Necessarily, the section below is a summary. As mentioned earlier however, the detailed text of the legislation to implement the oversight framework will be subject to later consultation.

SUPERVISORY AUTHORITIES

- 5.4 The Minister for Treasury & Resources (the “**Minister**”) would be required to designate, by order or regulations, one or more supervisory authorities to: (i) take responsibility for monitoring those persons conducting a business or activity set out in Schedule 2 for compliance with AML/CFT legislation; and (ii) take the necessary measures to ensure such compliance.
- 5.5 Before designation, the Minister would need to be satisfied that the supervisory authority had in place appropriate governance arrangements, skills, resources and mandate (or could obtain them) to undertake oversight of compliance with AML/CFT legislation.
- 5.6 This consultation paper does not consider what the depth and frequency of oversight should be – including whether oversight should be proactive or reactive.

THE REGISTRATION FRAMEWORK

- 5.7 All persons conducting a business or activity listed in Schedule 2 would be required to register with a supervisory authority designated by the Minister to oversee persons conducting a particular business or activity¹².
- 5.8 FATF Recommendations 23 and 24 [Regulation and supervision] (see Appendix B) set out certain vetting activities that should be undertaken by a supervisory authority in respect of persons conducting some of the business and activities set out in Schedule 2. Primarily, this is to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function, in the person (where a

¹² Note that persons prudentially supervised by the JFSC under one or more of the four regulatory laws would have the JFSC as their supervisory authority for overseeing compliance with AML/CFT legislation.

company or other non-natural person) conducting the relevant business or activity. In particular, for certain businesses¹³, the FATF recommends that the directors and senior management should be evaluated on the basis of full “fit and proper” criteria - including those relating to expertise and integrity.

5.9 To meet these FATF Recommendations, the proposed legal framework would provide for three categories of registration:

- Level 1 would require the applicant to pass a full “fit and proper” test (at registration and thereafter on a continuing basis);
- Level 2 would require the applicant to pass a test to establish that it was not owned or controlled by criminals (at registration and thereafter on a continuing basis); and
- Level 3 would require the applicant to file only basic information before being registered.

5.10 It is proposed that the Level 1 “fit and proper” test would be modelled on that applied in the four regulatory laws (eg, Article 9(3) of the Financial Services (Jersey) Law 1998) and that, where a person has registered under one or more of the four regulatory laws, it would be deemed to have met the Level 1 test set out above (ie, “grandfathered”) - though it would still be necessary for it to notify the JFSC of those Schedule 2 activities that it conducts.

5.11 It is proposed that the Level 2 test would require the applicant to confirm that none of its owners or controllers had been convicted of specified indictable offences.

5.12 In FATF terminology (see Appendix B), Level 1 would cover “financial institutions subject to the Core Principles”, Level 2 would cover “other financial institutions” plus casinos, and Level 3 would cover “designated non-financial businesses and professions” (except for casinos). The effect of this in Jersey is summarised below (though subject to consultation on changes to Schedule 2 set out in a concurrent consultation paper¹⁴):

Level 1 registration	<ul style="list-style-type: none"> • Deposit takers • Insurance businesses (long term) • Collective investment fund functionaries (and fund businesses) • Investment businesses • Trust company businesses • Money service businesses¹⁵
Level 2 registration	<ul style="list-style-type: none"> • Lenders • Providers of finance leases • Issuers and administrators of means of payment • Providers of guarantees and commitments • Traders for the account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments or transferable securities

¹³ Broadly speaking - deposit-takers, fund functionaries, insurance companies and investment businesses.

¹⁴ Entitled “Revision to the definition of financial services business”.

¹⁵ Note that legislation is shortly to be presented to the Minister for Economic Development to provide for the prudential supervision of money service businesses by the JFSC under the Financial Services (Jersey) Law 1998 - where turnover (as defined) is £300,000 or more.

	<ul style="list-style-type: none"> • Those who participate in securities issues and provide services related to such issues • Providers of safe keeping and administration of securities • Those who otherwise invest, administer or manage funds or money on behalf of other persons • Casinos
Level 3 registration	<ul style="list-style-type: none"> • Those who provide advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings • Money brokers • Providers of safe custody services • Estates agents when involved in transactions for their clients concerning the buying and selling of real estate • High value goods dealers • Lawyers, notaries and other independent legal professionals when participating in or assisting in the planning or execution of financial or property transactions • External accountants, auditors, tax advisors and insolvency practitioners • Certain persons who can benefit from an exclusion or an exemption from one of the four regulatory laws¹⁶

5.13 Where a person conducts business or activities extending across two or more levels, it would be required to apply for registration at the highest activity level that it conducts. For example, a lender that also provides safe custody services would be required to meet the Level 2 registration requirements for all of its activities, and a deposit-taker that also provides safe custody services would be subject to Level 1 registration requirements (and deemed to have been registered – in line with 5.10).

5.14 It would become a criminal offence for a person who is required to register to carry on such business or activity (or where only part of its business was covered by Schedule 2, that part of its business) without first registering with a designated supervisory authority. Transitional provisions would be introduced to give persons already conducting such a business or activity at the time the legal framework came into force a set period in which to apply for registration. They would be permitted to lawfully continue conducting such a business or activity whilst their application was being considered.

5.14.1 What are your views on the proposed registration framework?

5.14.2 Specifically, do you think that the registration framework should extend vetting to include Level 3 registration – perhaps in line with Guernsey’s proposals to require controllers, directors and managers of OFSBs to be “fit and proper”?

THE REGISTRATION PROCESS

5.15 The application for registration would be required to contain, or be accompanied by, information and documents prescribed by a designated supervisory authority and verified

¹⁶ Such persons would be made subject to a Level 3 registration on the basis that the JFSC has taken the view that such persons, using a risk-based approach, need not be subject to the Core Principles.

in such manner as the supervisory authority might require – all dependent upon the level of registration.

- 5.16 Information would be collected on the applicant for registration, the applicant's business or activity, and on persons who were principal persons¹⁷ in relation to the applicant.
- 5.17 An application for registration would have to be accompanied by a fee to cover the aggregate cost to the designated supervisory authority of processing applications. The fee would be prescribed by the Minister or set by the supervisory authority itself (within the type of consultation and appeal framework envisaged for the JFSC in the Financial Services Commission (Amendment No. 4) (Jersey) Law 200-). A general power would be granted to set fees at different amounts for each registration level, and at different amounts for business and activities within each registration level (on the basis of AML/CFT risk). It would be possible to set a fee at zero.
- 5.18 The legal framework would require a designated supervisory authority to register:
- a Level 1 applicant - only where the fit and proper test had been satisfied;
 - a Level 2 applicant - only where the test to establish that it was not owned or controlled by criminals had been satisfied; and
 - a Level 3 applicant - only where the required basic information had been provided.
- 5.19 Note that for Level 3 applicants, provided the relevant information and documents had been submitted and the relevant fee paid, the designated supervisory authority would be required to register the applicant (ie, the designated supervisory authority would have no discretion in the matter of registration).
- 5.20 A designated supervisory authority would be obliged to make public the name, address, and nature of the overseen business or activity conducted by each person on the register.
- 5.21 It would be a requirement for a person to update as necessary any document or information provided in connection with the initial application for registration. The Level 1 and Level 2 tests would need to be satisfied on an ongoing basis.
- 5.22 Persons on the register would be obliged to advise the designated supervisory authority when they stopped conducting the business or activity for which they had been registered so that the relevant entry on the register could be deleted.
- 5.23 It would become a criminal offence for any person, without reasonable excuse, to: fail to provide any document or information prescribed by the designated supervisory authority (or update such information when necessary); fail to answer a question asked in relation to such documents or information; knowingly or recklessly provide false or misleading documents or information; and to fail to notify the designated supervisory authority when the relevant business or activity ceased.

5.23.1 What are your views on the proposed registration process?

¹⁷ 'Principal person' would follow the definition in Article 1 of the Financial Services (Jersey) Law 1998.

POWERS AVAILABLE TO DESIGNATED SUPERVISORY AUTHORITIES

- 5.24 It is proposed that each designated supervisory authority would be granted the powers described in the paragraphs below. In broad terms, these are modelled on powers that the JFSC currently has under the four regulatory laws.
- 5.25 The effect of designation would be that the supervisory authority would have all of these powers available to it to use, whether or not it also had similar powers under other legislation. However, where an established body already had sufficient powers available to it, then it might rely solely on those existing powers and sanctions.
- 5.26 To monitor the compliance of a person with its obligations under AML/CFT legislation, a designated supervisory authority would be granted the power to enter premises to carry out routine on-site examinations. The authority would also, as part of those on-site examinations, have the power to request documents, information and to require answers to questions. The authority would be granted similar information gathering powers to enable it to conduct off-site (“desk-based”) examinations.
- 5.27 A designated supervisory authority would also be granted the power to serve a notice on a person (including persons connected with it), which would require the relevant person(s) to attend interviews to answer questions and/or provide information and documents, in both cases at a specified place and time. The authority could only exercise such a power where it was reasonably necessary in connection with the performance of its oversight functions.
- 5.28 A designated supervisory authority would be granted the power to charge each person it supervises an annual fee. The level of the fee would be sufficient to cover the aggregate cost of oversight of the persons supervised and provide for a modest surplus to enable a contingency fund to be set up (primarily to cover the *ad hoc* nature of investigation expenses). See 5.17.
- 5.29 As part of its oversight function, a designated supervisory authority would be granted the power to require a person to provide to the authority (at the person’s expense) with a report by an accountant (or other professional with relevant skill) on the person’s compliance with AML/CFT legislation or, where the person was subject to the fit and proper test, on any matter which might impact the fitness and propriety of the person.
- 5.30 The power of the designated supervisory authority to compel the production of information and documents would not extend to items protected by legal professional privilege - save that a lawyer could be required to disclose the name and address of his/her client.
- 5.31 In addition to the above oversight powers, a designated supervisory authority would have the power to carry out formal investigations (either using its own staff or agents) to investigate a person’s compliance with AML/CFT legislation or, where the person was subject to the fit and proper test, to investigate any matter which might impact the fitness and propriety of the person.
- 5.32 In connection with a designated supervisory authority’s use of the powers set out in 5.26 to 5.31 it would become a criminal offence for any person, without reasonable excuse, to: fail to provide any document or information requested; fail to answer a question asked; fail to attend an interview; and knowingly or recklessly provide false or misleading information. It would also be a criminal offence to obstruct an investigation.

- 5.33 A designated supervisory authority would be able to apply to the Bailiff for a warrant to enter and search premises and to take possession or copy documents. Before granting a warrant the Bailiff would need to be satisfied that: the subject of the warrant had failed to meet a previous request for information or documents; there were reasonable grounds for suspecting the completeness of any information or documents previously supplied by the subject of the warrant; it was likely that if the authority gave the subject of the warrant notice of the information or documents required, the information or documents would be likely to be removed, tampered with or destroyed; or an investigator appointed by the designated supervisory authority had been or may be obstructed in exercising a power of entry.
- 5.34 The legal framework would make it a criminal offence for any person to disclose to a third party confidential information provided to a designated supervisory authority exercising powers under the law - relating to a person that it oversees - without the consent of the person to whom it relates and the consent of the person that provided the information (if different). However, appropriate statutory gateways would allow confidential information to be released without such consent to enable a designated supervisory authority to share relevant information with appropriate bodies such as law enforcement agencies and similar supervisory authorities in Jersey and overseas.
- 5.35 The legal framework would provide for an order to be made by the Minister for Treasury & Resources setting out circumstances in which an auditor of a supervised person, where one had been appointed¹⁸, would need to communicate certain matters ('whistle-blow') to the designated supervisory authority. The order would be made by the Minister on the recommendation of the designated supervisory authority after obligatory consultation with a body(ies) which represents the interests of auditors in Jersey.
- 5.36 A designated supervisory authority would have the power to set requirements and issue guidance (analogous to Codes of Practice under the Financial Services (Jersey) Law 1998) to supervised persons to set out how they should meet their statutory obligations under AML/CFT legislation. Failure to follow such requirements would provide grounds for a designated supervisory authority to use an appropriate power or sanction.

5.36.1 Are you content with the proposed powers that would be available to a designated supervisory authority? If not, please explain why.

5.36.2 Do you consider that a designated supervisory authority should have additional powers? If so, please describe them and explain why.

SANCTIONS AVAILABLE TO DESIGNATED SUPERVISORY AUTHORITIES

5.37 In summary, a designated supervisory authority would have the following sanctions available to it:

- to issue a direction;
- to apply to the Court for a restraining injunction;
- to issue a public statement;
- to apply to the Court for an intervention Order;
- to disqualify a person;
- to condition, or revoke, a registration; and

¹⁸ Whether, as a result of a statutory requirement, some other requirement, or voluntarily.

- to petition the Royal Court to wind-up a company.

5.38 The circumstances in which these sanctions would be able to be used are set out below.

5.39 A designated supervisory authority would have the power, in relation to its oversight of compliance with AML/CFT legislation, **to issue directions** to a person, to do or not to do a specific action, if it appears that: a requirement in relation to the registration or licensing (in cases where the fit and proper test applied) was no longer satisfied; there had been failure to comply with AML/CFT legislation (which includes a requirement set by the authority); it was in the best interests of persons with whom the supervised person may transact or of creditors of the person; it was desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; or, it was in the best economic interests of Jersey.

5.40 A designated supervisory authority would be able to apply to the Court for a **restraining injunction** where the authority considered it likely that a person would contravene (or continue or repeat a contravention of) a requirement imposed under the proposed oversight framework or under AML/CFT legislation. The designated supervisory authority would also be able to apply to the Court for a remedial order - by which the person would be required to take such steps as the Court may direct to remedy the contravention.

5.41 A designated supervisory authority would be permitted **to issue a public statement** concerning a person where: it appears that there had been a contravention of a requirement imposed under the proposed oversight framework or a breach of AML/CFT legislation (including a requirement set by the authority); or it would be desirable to do so in the interests of the public. Ordinarily, the subject of the public statement would be given at least one month's advance notice of its publication. However, a designated supervisory authority would be permitted to reduce the notice period, or to do away with it altogether, where it considered it necessary to do so to protect the interests of the public.

5.42 **A power of intervention** would be granted to a designated supervisory authority whereby it could apply to the Court for an order making a supervised person subject to such supervision, restraint or conditions as the Court may specify. A designated supervisory authority would be able to petition the Court where the supervised person had contravened, or appears likely to contravene a requirement imposed under the proposed oversight framework or under AML/CFT legislation.

5.43 Where it considered it in the public interest, a designated supervisory authority **would be able to disqualify** (ban) a natural person from ownership of, taking part in the management of, or being employed by, a person conducting a business or activity subject to Schedule 2. The maximum disqualification period would be 15 years.

5.44 A designated supervisory authority would be able to sanction a person by **imposing conditions on its registration (all levels)**, or in egregious cases, **revoking its registration**. In the latter case, the supervisor would grant a "run-off" period in which the person must cease conducting the relevant business or activity.

5.45 A designated supervisory authority would be able to **petition the Court to wind up a company** through which a supervised person traded¹⁹. The court would only be able to grant the petition where it concluded that the winding-up would be just and equitable or that it would be expedient in the public interest to order the winding-up.

¹⁹ This would be achieved by an amendment to Article 155 of the Companies (Jersey) Law 1991.

5.46 In broad terms, the sanctions described above are modelled on powers that the JFSC currently has under the four regulatory laws. Those laws, as well as providing a basis for “conduct of business” regulation²⁰, provide a basis for “prudential” regulation²¹. Whilst certain aspects of conduct of business regulation are analogous to what the proposed legal framework described in this section would be designed to achieve, the proposed legal framework is not designed to address prudential issues. Consequently, there could be an argument that the sanctions available to a designated supervisory authority should not be as wide-ranging as provided for in the regulatory laws. Conversely, an argument could be made that the proposed legal framework should provide for extensive sanctions similar to those available under the four regulatory laws - given the potential risk posed to the Island’s reputation and integrity where legislation to detect and prevent money laundering and the financing of terrorism is flouted.

5.46.1 Is it appropriate to model the proposed sanctions on those set out in the four regulatory laws administered by the JFSC? If not, please explain why.

5.46.2 Are you content with the proposed sanctions that would be available to a designated supervisory authority? If not, please explain why.

5.46.3 Do you consider that a designated supervisory authority should have additional sanctions? If so, please describe them and explain why.

APPEALS

5.47 The legislation would contain rights of appeal to the Royal Court against decisions of a designated supervisory authority.

ACCOUNTABILITY

5.48 In common with other bodies that carry out an oversight function to deter financial crime and thus ensure that Jersey’s reputation and integrity in commercial and financial matters is maintained, each designated supervisory authority would be accountable to the States in respect of the oversight functions that it carries out.

5.49 Each authority would be required to prepare a report on its oversight activities in each of its financial years.

5.50 Each authority would be required to provide the Minister with the report as soon as practicable after the end of the financial year to which the report related, but in no case later than 4 months after the end of that year. The Minister would be required to lay a copy of the report before the States as soon as practicable after the Minister received the report.

5.51 Where considered to be desirable in the public interest to do so, the Minister would be able to issue written guidance, or general written directions, to a designated supervisory authority on matters of public policy that the Minister considers that the supervisory authority should take into account in carrying out its oversight responsibilities.

5.52 It would be a duty of a designated supervisory authority to have regard to any guidance, and to act in accordance with any directions, given to it by the Minister.

²⁰ That is, setting standards of behaviour which financial service businesses must follow.

²¹ That is, setting standards to ensure that financial service businesses are financially sound.

5.53 Before issuing any guidance or direction the Minister would be required to consult the designated supervisory authority.

5.54 The Minister would have to publish any guidance or direction that was issued.

EXCULPATION

5.55 A designated supervisory authority (including any person acting as an officer, employee, or agent, or performing any function on behalf of the authority), the Minister and the States, would benefit from a statutory exculpation. They would not be liable in damages for anything done or omitted in the performance or purported performance of any oversight function of the authority conferred by or under legalisation, unless it was shown that the act or omission was in bad faith.

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 Fees would be payable upon registration and annually thereafter. (The proposed level of the fees will be subject to later consultation.)
 - 6.1.2 For persons that would be included in Schedule 2 for the first time (and thus subject to the requirements of the Money Laundering (Jersey) Order 1999 for the first time) there would be a cost to those persons to adapt their operational practices and policies to ensure compliance with that Order.
 - 6.1.3 Costs would be incurred in establishing and maintaining a register and in oversight activities. (Those costs would be covered by the fees referred to in 6.1.1)
- 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 the first step towards ensuring that Jersey comes into line with FATF Recommendations on oversight for compliance with AML/CFT legislation. Although the full oversight regime will not be in place by the time of the next IMF assessment in early 2008, Jersey would be able to demonstrate to the IMF that it is seriously working towards full compliance.
 - 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
5.14.1	What are your views on the proposed registration framework?
5.14.2	Specifically, do you think that the registration framework should extend vetting to include Level 3 registration - perhaps in line with Guernsey's proposals to require controllers, directors and managers of OFSBs to be "fit and proper"?
5.23.1	What are your views on the proposed registration process?
5.36.1	Are you content with the proposed powers that would be available to a designated supervisory authority? If not, please explain why.
5.36.2	Do you consider that a designated supervisory authority should have additional powers? If so, please describe them and explain why.
5.46.1	Is it appropriate to model the proposed sanctions on those set out in the four regulatory laws administered by the JFSC? If not, please explain why.
5.46.2	Are you content with the proposed sanctions that would be available to a designated supervisory authority? If not, please explain why.
5.46.3	Do you consider that a designated supervisory authority should have additional sanctions? If so, please describe them and explain why.

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

FATF RECOMMENDATIONS 23 AND 24.

EXTRACT FROM THE FATF'S METHODOLOGY FOR ASSESSING COMPLIANCE WITH THE RECOMMENDATIONS

(Note: See the glossary at the end for a definition of certain terms used by the FATF.)

Recommendation 23

The essential criteria listed below should be read in conjunction with the text of Recommendation 23, its Interpretative Note, the text of Special Recommendation VI, and its Interpretative Note.

Note to assessors: Assessors should use criterion 23.1 to assess the overall adequacy of the regulatory and supervisory system, and to note any deficiencies that are not dealt with in other criteria. Assessors may also wish to have regard to matters raised in assessments made with respect to the Core Principles.

Essential criteria

23.1 Countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF Recommendations.

23.2 Countries should ensure that a designated competent authority or authorities has/have responsibility for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing.

23.3 Supervisors or other competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in a financial institution.

23.3.1 Directors and senior management of financial institutions subject to the Core Principles should be evaluated on the basis of “fit and proper” criteria including those relating to expertise and integrity.

23.4 For financial institutions that are subject to the Core Principles¹ the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes, except where specific criteria address the same issue in this Methodology.

Examples of regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, include requirements for: (i) licensing and structure; (ii) risk management processes to identify, measure, monitor and control material risks; (iii) ongoing supervision and (iv) global consolidated supervision where required by the Core Principles.

23.5 Natural and legal persons providing a money or value transfer service, or a money or currency changing service should be licensed or registered.

23.6 Natural and legal persons providing a money or value transfer service, or a money or currency changing service should be subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

¹ Note to assessors: refer to the Core Principles for a precise description of the financial institutions that are covered, but broadly speaking it refers to: (1) banking and other deposit-taking business, (2) insurers and insurance intermediaries, and (3) collective investment schemes and market intermediaries.

23.7 Financial institutions (other than those mentioned in Criterion 23.4) should be licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector i.e. if there is a proven low risk then the required measures may be less.

Recommendation 24

The essential criteria listed below should be read in conjunction with the text of Recommendation 24.

Essential criteria

24.1 Countries should ensure that casinos (including Internet casinos) are subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.

24.1.1 Countries should ensure that a designated competent authority has responsibility for the AML/CFT regulatory and supervisory regime. The competent authority should have adequate powers to perform its functions, including powers to monitor and sanction (countries should ensure that criteria 17.1-17.4 apply to the obligations under R.12 and R.16).

24.1.2 Casinos should be licensed by a designated competent authority.

24.1.3 A competent authority should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino.

24.2 Countries should ensure that the other categories of DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering or terrorist financing in that sector i.e. if there is a proven low risk then the extent of the required measures may be less.

24.2.1 There should be a designated competent authority or SRO responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. Such an authority or SRO should have:

- a) Adequate powers to perform its functions, including powers to monitor and sanction (countries should ensure that criteria 17.1-17.4 apply to the obligations under R.12 and R.16).
- b) Sufficient technical and other resources to perform its functions².

² In assessing compliance with this criterion, assessors should have regard to Criteria 30.1 to 30.4 where it is appropriate to do so (i.e. depending on the type of the designated competent authority or SRO, its size, its responsibilities, etc).

FATF Glossary

Competent authorities	<i>Competent authorities</i> refers to all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors.
Core Principles	<i>Core Principles</i> refers to the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision, the Objectives and Principles for Securities Regulation issued by the International Organization of Securities Commission (IOSCO), and the Insurance Supervisory Principles issued by the International Association of Insurance Supervisors (IAIS).]
DNFBPs (Designated non-financial businesses and professions)	<p><i>DNFBPs</i> refers to:</p> <ul style="list-style-type: none"> a) Casinos (which also includes internet casinos). b) Real estate agents. c) Dealers in precious metals. d) Dealers in precious stones. e) Lawyers, notaries, other independent legal professionals and accountants – 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. f) 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: <ul style="list-style-type: none"> • acting as a formation agent of 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; • providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; • acting as (or arranging for another person to act as) a trustee of an express trust; • acting as (or arranging for another person to act as) a nominee shareholder for another person.
Financial institution	<p><i>Financial institutions</i> means any person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer:</p> <ol style="list-style-type: none"> 1. Acceptance of deposits and other repayable funds from the public. 2. Lending. 3. Financial leasing. 4. The transfer of money or value. 5. Issuing and managing means of payment (eg. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money). 6. Financial guarantees and commitments. 7. Trading in:

	<p>(a) money market instruments (cheques, bills, CDs, derivatives etc.);</p> <p>(b) foreign exchange;</p> <p>(c) exchange, interest rate and index instruments;</p> <p>(d) transferable securities;</p> <p>(e) commodity futures trading.</p> <p>8. Participation in securities issues and the provision of financial services related to such issues</p> <p>9. Individual and collective portfolio management.</p> <p>10. Safekeeping and administration of cash or liquid securities on behalf of other persons.</p> <p>11. Otherwise investing, administering or managing funds or money on behalf of other persons.</p> <p>12. Underwriting and placement of life insurance and other investment related insurance.</p> <p>13. Money and currency changing.</p> <p>When a financial activity is carried out by a person or entity 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 anti-money laundering measures is not necessary, either fully or partially.</p> <p>In strictly limited and justified circumstances, and based on a proven low risk of money laundering, a country may decide not to apply some or all of the Forty Recommendations to some of the financial activities stated above</p>
SRO (self-regulatory organisation)	<p><i>SRO</i> refers to a body that represents a profession (eg, lawyers, notaries, other independent legal professionals or accountants), and which is made up of member professionals, has a role in regulating the persons that are qualified to enter and who practice in the profession, and also performs certain supervisory or monitoring type functions. For example, it would be normal for this body to enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession.</p>