

States
of Jersey



JFSC

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

CONSULTATION PAPER NO. 3 2007

PROPOSALS TO UPDATE JERSEY'S AML/CFT FRAMEWORK

**Proposed amendments to primary legislation for the
purposes of countering money laundering and the
financing of terrorism**

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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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 31 August 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 - CONSULTATION PROPOSALS

OVERVIEW

- 1.1 The Island's framework to counter money laundering and the financing of terrorism ("AML/CFT framework") will be subject to review by the International Monetary Fund (the "IMF") in the first half of 2008. The IMF will assess compliance with the requirements of the Financial Action Task Force (the "FATF") on Money Laundering and Terrorist Financing, known as the Forty Recommendations and Nine Special Recommendations (the "[FATF Recommendations](#)"), most recently updated in October 2004. Jersey's Chief Minister has made a public commitment to implementing an AML/CFT framework consistent with the requirements of the FATF.
- 1.2 The core components of Jersey's AML/CFT framework are the Proceeds of Crime (Jersey) Law 1999 (the "[Proceeds of Crime Law](#)"), the Drug Trafficking Offences (Jersey) Law 1988 (the "[Drug Trafficking Law](#)") and the Terrorism (Jersey) Law 2002 (the "[Terrorism Law](#)"). A number of amendments to this, and related, legislation, to enable the FATF Recommendations to be satisfied are in train. Additionally, in some areas new legislation is also being progressed by the AML/CFT Strategy group to implement requirements of the FATF Recommendations. The purpose of this consultation paper is to set out those AML/CFT policy proposals that will either impact the financial sector or be of wider general interest, enabling the AML/CFT Strategy Group to receive feedback on key proposals to update Jersey's AML/CFT regime.
- 1.3 Due to the limited time available for the introduction of these revisions to the AML/CFT framework, this public consultation process will be followed by more limited consultation on the draft legislation with the industry anti-money laundering steering group, and with any individual respondents to the consultation.
- 1.4 Previous consultation documents issued by the AML/CFT Strategy Group may be found on the following webpage:
<http://www.gov.je/ChiefMinister/International+Finance/>
- 1.5 The adequacy of Jersey's anti-money laundering legislation is important in maintaining Jersey's reputation as a reputable international finance centre.

WHAT IS PROPOSED AND WHY?

Failing to submit a suspicious activity report

- 1.6 It is proposed to introduce requirements into the Proceeds of Crime Law and the Drug Trafficking Law for a person working for a Schedule 2 business¹ to make a disclosure to the Joint Financial Crimes Unit (the "JFCU") where the person knows, suspects or has reasonable grounds to know or suspect that another person is engaged in money laundering. This form of direct reporting obligation is required by [FATF Recommendation](#)

¹ A Schedule 2 business is a person carrying on by way of business an activity listed in Schedule 2 of the Proceeds of Crime Law. The AML/CFT Strategy Group is currently consulting on proposals to extend the list of activities set out in Schedule 2 - AML/CFT Strategy Group Consultation Paper No. 1 - www.gov.je/ChiefMinister.

[13](#) (refer to **Appendix C**), in order to improve the effectiveness of a jurisdiction's suspicious activity reporting regime. The new provisions are to achieve an effect that is consistent with the provisions for persons working for a Schedule 2 business to make disclosures under Article 23 of the Terrorism Law (refer to **Appendix D**).

Extension of investigatory powers

- 1.7 It is proposed to extend investigatory police powers under the Proceeds of Crime Law and Drug Trafficking Law, so that they are consistent with those of Schedules 6 and 7 of the Terrorism Law, in order to meet the requirements of [FATF Recommendation 28](#) (refer to **Appendix C**) for investigatory authorities to have effective powers. In particular, this will enable the police to apply to the Bailiff to obtain financial information orders (Schedule 6 of the Terrorism Law) and account monitoring orders (Schedule 7 of the Terrorism Law) in order to obtain specified information from a Schedule 2 business (refer to **Appendix D**).

Registration of overseas civil confiscation orders and powers of assistance

- 1.8 Additionally, it is proposed to allow for the registration of external civil asset recovery orders in Jersey and to extend international co-operation powers to enable assistance to be provided in relation to external civil asset recovery investigations and proceedings. Such requirements are key to enabling Jersey to support jurisdictions such as the UK and USA, which have established civil asset forfeiture regimes, and by doing so, to ensure that Jersey continues to be viewed internationally as a co-operative jurisdiction. [FATF Recommendations 36, 38 and 40](#) (refer to **Appendix C**) require jurisdictions to provide effective international co-operation and mutual legal assistance.

WHO WOULD BE AFFECTED?

- 1.9 The proposals set out above to directly require Schedule 2 businesses to submit suspicious activity reports and proposals to extend the investigatory powers of the police (paragraphs 1.6 and 1.7) will only affect persons conducting Schedule 2 business. **Appendix B** sets out the list of business activities within Schedule 2, as set out in its proposed extended form in AML/CFT Strategy Group Consultation Paper No. 1 - www.gov.je/ChiefMinister.
- 1.10 The proposals set out above concerning external civil asset investigations and powers of assistance (paragraph 1.8), while having general application, will mainly affect persons conducting Schedule 2 business, as it is these persons who will be holding the information or assets which are the subject of the external civil investigations or proceedings.

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 cost implications, to quantify those costs.
- 2.3 Feedback received from this consultation process will be taken into account in the finalisation of draft legislation by the AML/CFT Strategy Group, to be lodged au Greffe for States' debate during November 2007.

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. The JFSC provides the secretariat for the group.

4 DETAILED PROPOSALS

FAILING TO SUBMIT A SUSPICIOUS ACTIVITY REPORT

- 4.1 A person working for a Schedule 2 business² will be required to make a disclosure to the Joint Financial Crimes Unit (the “JFCU”) where the person knows, suspects or has reasonable grounds to know or suspect that another person is engaged in money laundering. The new provisions are to achieve an effect consistent with the provisions for persons working for a Schedule 2 business to make disclosures under Article 23 of the Terrorism Law, permitting the required disclosures to be made either directly to the JFCU or to the Money Laundering Reporting Officer of the Schedule 2 business.
- 4.2 Additionally, it is proposed that an offence of failing to make the required disclosure will not be committed if the person (i) does not know or suspect that another person is engaged in money laundering and (ii) has not been provided by his employer with the training required by an Order made under Article 37 of the Proceeds of Crime Law (the Money Laundering Order 1999). It is also proposed that this defence will become a feature of Article 23 of the Terrorism Law.

EXTENSION OF INVESTIGATORY POWERS

- 4.3 It is proposed to extend investigatory police powers under the Proceeds of Crime Law and Drug Trafficking Law, so that they are consistent with those of Schedule 6 and 7 of the Terrorism Law, in order to meet the requirements of [FATF Recommendation 28](#) for investigatory authorities to have effective powers. In particular, this will enable the police to apply to the Bailiff to obtain financial information orders and account monitoring orders in order to obtain specified information from a Schedule 2 business.
- 4.4 The provisions will require the Bailiff to be satisfied that certain criteria are met before the order is granted.
- 4.5 Financial information orders will require the provision of customer information, and may apply to all Schedule 2 businesses; a particular description, or particular descriptions, of Schedule 2 business; or a particular Schedule 2 business or particular Schedule 2 businesses.
- 4.6 Customer information means:
- information as to whether a business relationship exists or existed between a Schedule 2 business and a particular person (a customer);
 - a customer’s account number;
 - a customer’s full name;
 - a customer’s date of birth;
 - a customer’s address or former address;

² A schedule 2 business is a person carrying on by way of business an activity listed in Schedule 2 of the Proceeds of Crime Law.

- the date on which a business relationship between a Schedule 2 business and a customer begins or ends;
- any evidence of a customer's identity obtained by a Schedule 2 business in pursuance of or for the purposes of any legislation relating to money laundering; and
- the identity of a person sharing an account with a customer.

4.7 In contrast to the focus on historic activity of financial information orders and production orders³, account monitoring orders will be focused on future activity. The account monitoring order will require specified information to be provided for specified accounts for a set period, to a maximum of 90 days from the date of the order, enabling law enforcement authorities to monitor the activity over the account for the specified period.

REGISTRATION OF OVERSEAS CIVIL CONFISCATION ORDERS AND POWERS OF INVESTIGATORY ASSISTANCE

4.8 It is proposed to allow for the registration of external civil asset recovery orders in Jersey and to extend international co-operation powers to enable assistance to be provided in relation to external civil asset recovery investigations and proceedings. Such requirements are key to enabling Jersey to support jurisdictions such as the UK and USA, which have established civil asset forfeiture regimes, and by doing so, to ensure that Jersey continues to be viewed internationally as a co-operative jurisdiction.

OTHER PROPOSED CHANGES

4.9 Additionally, the provisions of Article 37 of the Proceeds of Crime Law are under review to: (1) enable designated authorities other than the Commission to issue AML/CFT guidance; and (2) ensure that the core requirements of the FATF Recommendations (Appendix E) may be provided for by Order made under the Proceeds of Crime Law (the Money Laundering Order).

³ Existing evidence gathering power in the Proceeds of Crime Law, Drug Trafficking Offences Law and Terrorism Law.

APPENDIX A

LIST OF REPRESENTATIVE BODIES WHO HAVE BEEN SENT THIS CONSULTATION PAPER

- Association of Private Client Investment Managers and Stockbrokers
- Institute of Directors
- Jersey Bankers' Association
- Jersey Association of English Solicitors
- Jersey Association of Trust Companies
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey Motor Trades Federation
- Jersey Society of Chartered and Certified Accountants
- Jersey Taxation Society
- Law Society of Jersey
- The Society of Trust and Estate Practitioners

OTHER BODIES WHO HAVE BEEN SENT THIS CONSULTATION PAPER

- Jersey Business Venture
- Jersey Consumer Council

APPENDIX B

Policy proposals for a revised Schedule 2 to the Proceeds of Crime Law

[As set out in the AML/CFT Strategy Group Consultation Paper No.1 2007 www.gov.je/ChiefMinister]

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 or 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. <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>
3	The business of: <ul style="list-style-type: none"> (6) providing external accountancy services; (7) providing advice about the tax affairs of another person; (8) providing audit services; or (9) providing insolvency services. <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>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

EXTRACTS OF RELEVANT FATF RECOMMENDATIONS

The full FATF Recommendations may be found by visiting the FATF's website:

<http://www.fatf-gafi.org/>

Recommendation 3

Countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to: (a) identify, trace and evaluate property which is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the State's ability to recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

Recommendation 13

If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).

Recommendation 28

When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.

Recommendation 36

Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings.

Countries should ensure that the powers of their competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance, and if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.

Recommendation 38

There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. There should also be arrangements for co-ordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.

Recommendation 40

Countries should ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts. There should be clear and effective gateways to facilitate the prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to both money laundering and the underlying predicate offences. Exchanges should be permitted without unduly restrictive conditions.

Where the ability to obtain information sought by a foreign competent authority is not within the mandate of its counterpart, countries are also encouraged to permit a prompt and constructive exchange of information with non-counterparts. Co-operation with foreign authorities other than counterparts could occur directly or indirectly. When uncertain about the appropriate avenue to follow, competent authorities should first contact their foreign counterparts for assistance.

Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.

APPENDIX D

EXTRACTS OF THE TERRORISM (JERSEY) LAW 2002

FAILURE TO DISCLOSE: FINANCIAL INSTITUTIONS⁴

Article 23

- (1) A person commits an offence if each of the following 3 conditions is satisfied.
- (2) The first condition is that the person –
 - (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting,that another person has committed an offence under any of Articles 15 to 18.
- (3) The second condition is that the information or other matter –
 - (a) on which the person’s knowledge or suspicion is based; or
 - (b) which gives reasonable grounds for such knowledge or suspicion,came to him or her in the course of the business of a financial institution.
- (4) The third condition is that the person does not disclose the information or other matter to an officer of the Force, a customs officer or a nominated officer as soon as is practicable after it comes to him or her.
- (5) But a person does not commit an offence under this Article if –
 - (a) the person has a reasonable excuse for not disclosing the information or other matter;
 - (b) the person is a professional legal adviser and the information or other matter came to him or her in privileged circumstances.
- (6) In deciding whether a person committed an offence under this Article the court must consider whether he or she followed any relevant guidance which was at the time concerned –
 - (a) issued by the Jersey Financial Services Commission; and
 - (b) published in a manner approved by the Commission as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (7) A disclosure to a nominated officer is a disclosure which –
 - (a) is made to a person nominated by the alleged offender’s employer to receive disclosures under this Article; and
 - (b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose.
- (8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him or her –
 - (a) by (or by a representative of) a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;
 - (b) by (or by a representative of) a person seeking legal advice from the adviser; or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.

⁴ A financial institution is defined in Article 1 of the Terrorism Law to be a Schedule 2 business.

- (9) But paragraph (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.
- (10) For the purposes of paragraph (2), a person is to be taken to have committed an offence there mentioned if –
- (a) the person has taken action or been in possession of a thing; and
 - (b) the person would have committed the offence if he or she had been in Jersey at the time when he or she took the action or was in possession of the thing.
- (11) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

FINANCIAL INFORMATION

SCHEDULE 6

(Article 32)

1 Order to provide customer information

- (1) Where an order has been made under this paragraph in relation to a terrorist investigation, an officer of the Force named in the order may require a financial institution to which the order applies to provide customer information for the purposes of the investigation.
- (2) The order may provide that it applies to –
- (a) all financial institutions;
 - (b) a particular description, or particular descriptions, of financial institutions; or
 - (c) a particular financial institution or particular financial institutions.
- (3) The information shall be provided –
- (a) in such manner and within such time as the officer of the Force may specify; and
 - (b) notwithstanding any restriction on the disclosure of information imposed by any enactment or otherwise.
- (4) An institution which fails to comply with a requirement under this paragraph shall be guilty of an offence.
- (5) It is a defence for an institution charged with an offence under sub-paragraph (4) to prove –
- (a) that the information required was not in the institution's possession; or
 - (b) that it was not reasonably practicable for the institution to comply with the requirement.
- (6) An institution guilty of an offence under sub-paragraph (4) shall be liable to a fine not exceeding level 4 on the standard scale.

2 Who may apply for order

An order under paragraph 1 may be made on the application of an officer of the Force of at least the rank of chief inspector.

3 Who may make order

An order under paragraph 1 may be made only by the Bailiff.

4 Consent required for application

An application for an order under paragraph 1 may only be made with the consent of the Attorney General.

5 Rules of court

The power to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948 shall include power to make provision about the procedure for an application under paragraph 1.

6 Criteria for making order

The Bailiff may only make an order under paragraph 1 if satisfied that –

- (a) the order is sought for the purposes of a terrorist investigation;
- (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
- (c) the order will enhance the effectiveness of the investigation.

7 Customer information

(1) In this Schedule “customer information” means (subject to sub-paragraph (3)) –

- (a) information whether a business relationship exists or existed between a financial institution and a particular person (“a customer”);
- (b) a customer’s account number;
- (c) a customer’s full name;
- (d) a customer’s date of birth;
- (e) a customer’s address or former address;
- (f) the date on which a business relationship between a financial institution and a customer begins or ends;
- (g) any evidence of a customer’s identity obtained by a financial institution in pursuance of or for the purposes of any legislation relating to money laundering; and
- (h) the identity of a person sharing an account with a customer.

(2) For the purposes of this Schedule there is a business relationship between a financial institution and a person if (and only if) –

- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and
- (b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.

(3) The States may by Regulations provide for a class of information –

- (a) to be customer information for the purposes of this Schedule; or
- (b) to cease to be customer information for the purposes of this Schedule.

8 Offence by body corporate, etc.

Where an individual is convicted of an offence under paragraph 1(4) by virtue of this paragraph and Article 63, the individual shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale, or both.

9 Self-incrimination

- (1) Customer information provided by a financial institution under this Schedule shall not be admissible in evidence in criminal proceedings against the institution or any of its officers or employees.
- (2) Sub-paragraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(4) (including proceedings brought by virtue of paragraph 8).

ACCOUNT MONITORING ORDERS

SCHEDULE 7

(Article 33)

1 Account monitoring orders

- (1) The Bailiff may, on an application made to him or her by an officer of the Force of at least the rank of chief inspector, make an account monitoring order if he or she is satisfied that –
 - (a) the order is sought for the purposes of a terrorist investigation;
 - (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
 - (c) the order will enhance the effectiveness of the investigation.
- (2) An application for an order under sub-paragraph (1) may only be made with the consent of the Attorney General.
- (3) The application for an account monitoring order must state that the order is sought against the financial institution specified in the application in relation to information which –
 - (a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another); and
 - (b) is of the description so specified.
- (4) The application for an account monitoring order may specify information relating to –
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
 - (b) a particular description, or particular descriptions, of accounts so held; or
 - (c) a particular account, or particular accounts, so held.
- (5) An account monitoring order is an order that the financial institution specified in the application for the order must –
 - (a) for the period specified in the order;
 - (b) in the manner so specified;
 - (c) at or by the time or times so specified; and
 - (d) at the place or places so specified,provide information of the description specified in the application to an officer of the Force named in the order.
- (6) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

2 Applications

- (1) An application for an account monitoring order may be made ex parte to the Bailiff in chambers.
- (2) The description of information specified in an application for an account monitoring order may be varied by the officer who applied for the order or another officer of the Force of at least the rank of chief inspector.

3 Discharge or variation

- (1) An application to discharge or vary an account monitoring order may be made to the Bailiff by –
 - (a) the officer who applied for the order or another officer of the Force of at least the rank of chief inspector;
 - (b) any person affected by the order.
- (2) The Bailiff may confirm, vary or discharge the order.

4 Rules of court

The power to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948 shall include power to make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

5 Effect of orders

- (1) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (2) An account monitoring order has effect as if it were an order of the Royal Court.

6 Statements

- (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But sub-paragraph (1) does not apply –
 - (a) in the case of proceedings for contempt of court;
 - (b) in the case of proceedings under Article 26 where the financial institution has been convicted of an offence under any of Articles 15 to 18;
 - (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) against a financial institution unless –
 - (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,by or on behalf of the financial institution in the proceedings arising out of the prosecution.

APPENDIX E

CORE ELEMENTS OF THE FATF RECOMMENDATIONS

For the full text of the FATF Forty Recommendations and Nine Special Recommendations refer to the FATF website:

http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html-40recs

The following list sets out in summary the core elements of the revised FATF Recommendations:

1. Schedule 2 businesses must be prohibited from keeping anonymous accounts or accounts in fictitious names. FATF 5
2. Schedule 2 businesses must take customer due diligence measures when establishing a business relationship or undertaking occasional transactions, and at later stages following certain trigger events. FATF 5
3. Schedule 2 businesses must undertake ongoing due diligence throughout the business relationship or occasional transaction. FATF 5
4. Schedule 2 businesses must undertake enhanced due diligence for higher risk categories of customer, business relationship or occasional transaction. FATF 5
5. Schedule 2 businesses must apply customer due diligence measures to existing customers – i.e. those persons who were customers at the time that legislation implementing new requirements is brought into force. FATF 5
6. Schedule 2 businesses must maintain records of customer transactions, customer due diligence information and evidence of identity, and customer account files and business correspondence. FATF 10
7. Schedule 2 businesses must pay special attention to specific categories of customer transactions and activity, to involve monitoring customer activity, undertaking investigations and keeping records of the findings. FATF 11
8. The Joint Financial Crimes Unit must be designated as the body to receive, analyse and disseminate suspicious activity reports. Schedule 2 businesses must be required to file suspicious activity reports with the JFCU, and the JFCU must have the ability to prescribe a standard reporting format. FATF 13
9. Schedule 2 businesses must establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing, to include employee screening, employee training, record retention, customer activity monitoring, suspicious activity reporting procedures and compliance management arrangements. FATF 15
10. Designated authorities must have the ability to prohibit Schedule 2 businesses from entering into, or continuing, specified categories of customer relationship or transaction. FATF 21
11. Designated authorities must have the ability to require Schedule 2 businesses to apply countermeasures to categories of customer relationship or transaction. FATF 21
12. Schedule 2 businesses must be required to ensure that overseas branches and subsidiaries observe equivalent measures to counter money laundering and terrorist financing. FATF 22
13. Schedule 2 businesses must supply the Joint Financial Crimes Unit with additional information required to enable the Unit to properly analyse suspicious activity reports. FATF 26