

Jersey

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Contents – Jersey

1	Introduction	383
1.1	Overview	383
1.2	Legal and administrative structure	383
2	Criminal provisions and implementation of international sanctions	384
2.1	Offence of money laundering	384
2.2	Offence of terrorist financing	384
2.3	Offence of tipping off	385
2.4	Offence of failing to report	386
2.5	Offence of failing to have procedures to forestall and prevent money laundering	386
2.6	Freezing, seizing, and confiscating assets	386
2.7	The criminal liability of legal entities	386
2.8	Implementation of specific international sanctions	387
3	Money Laundering Order	387
3.1	Overview	387
3.2	Prospects	388
4	Scope of application of the Money Laundering Order	388
4.1	Schedule 2 to the Proceeds of Crime Law	388
4.2	Prospects	389
5	Obligations imposed on financial services businesses	389
5.1	Obligation to have procedures of internal control and communication	389
5.2	Reporting procedures	391
5.3	Guidance Notes	392
6	Supervision for compliance with requirements to prevent and detect money laundering or terrorist financing	392
6.1	Role of the Commission	392
6.2	Examination visits	393
6.3	Breaches of Money Laundering Order detected by Commission	393
6.4	Role of the Joint Financial Crimes Unit (JFCU)	394
6.5	Prospects	394
7	Law enforcement	395
7.1	The JFCU	395
7.2	The Law Officers' Department	395
8	International co-operation	395
8.1	Commitment	395
8.2	Assistance that can be given	395
	Address	396
	Abbreviations	396
	Bibliography	397

1 Introduction

1.1 Overview

The continuing ability of *Jersey's* finance industry to attract legitimate customers with funds and assets that are clean and untainted by criminality depends, in large part, upon the Island's reputation as a sound, well-regulated jurisdiction. Any financial services business in *Jersey* that assists in laundering the proceeds of crime, or financing of terrorism, whether:

- with knowledge or suspicion of the connection to crime, or
- in certain circumstances, acting without regard to what it may be facilitating through the provision of its products or services

will risk prosecution for **criminal offences**, risk the loss of its licence or other regulatory sanctions (where regulated and supervised), face the loss of its reputation, and damage the integrity of *Jersey's* finance industry as a whole.

Jersey has had in place a framework of anti-money laundering legislation since 1988, and for the countering of terrorism since 1990. This legislation has continued to be updated as new threats have emerged, including legislation to extend the definition of criminal conduct for which a money laundering offence can be committed and to combat international terrorism.

Every financial services business in *Jersey* must recognise the role that it plays in protecting itself, and its employees, from involvement in money laundering and terrorist financing, and also in protecting the Island's reputation for probity. This principle relates not only to business operations within *Jersey*, but also operations conducted by *Jersey* businesses outside the Island.

1.2 Legal and administrative structure

Jersey's main legislative provisions against money laundering and terrorist financing are contained in the:

- *Proceeds of Crime (Jersey) Law 1999 (Proceeds of Crime Law)*.
- *Drug Trafficking Offences (Jersey) Law 1988 (Drug Trafficking Offences Law)*.
- *Terrorism (Jersey) Law 2002 (Terrorism Law)*.

In addition, the *Money Laundering (Jersey) Order 1999 (Money Laundering Order)* applies additional obligations to financial services businesses (defined later) to establish procedures, controls, and communication, and to take appropriate measures to train and promote an awareness of money laundering and terrorist financing, with the purpose of forestalling and preventing money laundering and terrorist financing.

Additional obligations in the *Money Laundering Order* are supported by the *Anti-Money Laundering Guidance Notes for the Finance Sector (Guidance Notes)*, which were introduced at the same time as the *Proceeds of Crime Law* and issued by the *Jersey Financial Services Commission; (Commission)*. The *Guidance Notes* have since been supplemented by a number of *Anti-Money Laundering Guidance Updates*. The status of these *Guidance Notes* is considered later.

2 Criminal provisions and implementation of international sanctions

2.1 Offence of money laundering

Money laundering is defined in Article 1 of the *Proceeds of Crime Law*. It means conduct that is an offence under Articles 32, 33 or 34 of the *Proceeds of Crime Law*, under Articles 30, 37, or 38 of the *Drug Trafficking Offences Law*, or under any of Articles 15 to 18 of the *Terrorism Law*.

Under the provisions set out above, it is an offence in *Jersey* to:

- Conceal or disguise any property, convert or transfer any property, or remove property from *Jersey*, knowing or having reasonable grounds to suspect that the property represents the proceeds of criminal conduct.
- Acquire, use, or possess property, knowing that the property represents another person's proceeds of criminal conduct.
- Become concerned in an arrangement that assists another person to retain the proceeds of criminal conduct, knowing or suspecting that the person has been engaged in criminal conduct or has benefited from criminal conduct.

The definition of money laundering in the *Proceeds of Crime Law* includes terrorist financing offences.

Criminal conduct is defined to cover drug trafficking, terrorist activities, and any other offence in *Jersey* for which a person is liable on conviction to imprisonment for a term of one or more years, and includes conduct that has occurred in another country, which would have constituted an offence had it occurred in *Jersey*.

It is not necessary that a person be convicted of a offence to establish that property represents the proceeds of criminal conduct.

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

2.2 Offence of terrorist financing

Articles 15 to 18 of the *Terrorism Law* criminalise the provision and collection of funds and use and possession of property for the purposes of terrorism.

Under the provisions set out above, it is an offence in *Jersey* to:

- Invite another person to provide property, intending that it should be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism.
- Receive property, intending that it should be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism.
- Provide property knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- Use property for the purposes of terrorism.
- Possess property, intending that it should be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism.

- Enter into, or become concerned in, an arrangement as a result of which property is made available or is to be made available to another, knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- Enter, or become concerned in, an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property.

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

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

2.3 Offence of tipping off

Under Article 35 of the *Proceeds of Crime Law* and Article 41 of the *Drug Trafficking Offences Law*, a person is guilty of the offence of **tipping off** if he discloses information to anyone that is likely to prejudice an investigation into money laundering:

- whilst knowing or suspecting that an investigation into money laundering is being, or is about to be, conducted; or
- whilst knowing or suspecting that a suspicious activity report has been made to a police officer; or
- whilst knowing or suspecting that a suspicious activity report has been made to the appropriate internal reporting officer at his place of employment.

The tipping off offence under Article 35 of the *Terrorism Law* contains an objective test, where the information or other matter likely to prejudice an investigation or proposed investigation is disclosed when there is reasonable cause to suspect that either a suspicious activity report has been or is to be made, or that an investigation is underway or proposed.

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

However, a person will not have committed a tipping off offence if he is able to prove either of the following:

- that he is a professional legal advisor disclosing the information in connection with, or in contemplation of, legal proceedings or the giving of legal advice (except where there is a view to furthering a criminal purpose); or
- that he did not know or suspect that the disclosure was likely to prejudice the investigation.

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

A person who is guilty of such an offence is liable to imprisonment for a term not exceeding five years, or to a fine or to both.

2.4 Offence of failing to report

Offences arise under Article 40 of the *Drug Trafficking Offences Law* and Articles 20 and 23 of the *Terrorism Law*. Under Article 40 of the *Drug Trafficking Offences Law*, it is an offence for a person to **fail to report** (as soon as is reasonably practicable) knowledge or suspicion of another person's involvement in drug money laundering where that knowledge or suspicion comes to his or her attention in the course of a trade, profession, business or employment. A similar obligation exists under Article 20 of the *Terrorism Law* but does not apply to financial services businesses (defined later), which are subject to Article 23.

Under Article 23 of the *Terrorism Law*, it is an offence for a financial services business to fail to report where there is **knowledge or suspicion**, or where there are **reasonable grounds to be suspicious**, of another person's involvement in either terrorist money laundering or terrorist financing.

This offence is punishable by a maximum term of imprisonment of five years, or a fine or both.

2.5 Offence of failing to have procedures to forestall and prevent money laundering

Article 37 of the *Proceeds of Crime Law* provides for Jersey's Treasury and Resources Minister to prescribe procedures, by order, to be maintained by persons who carry on financial services business (defined later) for the purposes of forestalling and preventing money laundering (the *Money Laundering Order*).

If a person carrying on a financial services business contravenes or fails to comply with a requirement that is contained in the *Money Laundering Order*, he shall be guilty of an offence. If the person is a body corporate it shall be liable to a fine. If the person is not a body corporate, he shall be liable to imprisonment for a term not exceeding two years, or a fine or both.

2.6 Freezing, seizing, and confiscating assets

The *Proceeds of Crime Law*, *Drug Trafficking Offences Law*, and *Terrorism Law* provide for the confiscation of proceeds and instrumentalities of criminal conduct. The *Proceeds of Crime Law* and *Drug Trafficking Offences Law* (but not the *Terrorism Law*) also provide for **the confiscation of property of corresponding value**.

These laws also provide for the freezing and seizure of assets subject to confiscation prior to the issuance of a confiscation order where there are reasonable grounds for doing so.

In addition, there are also provisions in *Jersey* to provide for **the civil forfeiture of terrorist cash**.

2.7 The criminal liability of legal entities

The offences of money laundering and terrorist financing may be committed by both legal entities and natural persons by virtue of Article 3 of the *Interpretation (Jersey) Law 1954*.

Also, under Article 37(5) of the *Proceeds of Crime Law* and Article 63 of the *Terrorism Law*, where an offence is committed by a legal entity, such as failure to comply with the *Money Laundering Order*, and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, director, manager, secretary or other similar officer of the legal entity, the person shall also be guilty of the offence.

2.8 Implementation of specific international sanctions

2.8.1 United Nations (UN) sanctions

UN Security Council Resolution 1267 (1999) (and its successor resolutions – 1333 (2000), 1363 (2001), and 1390 (2002)) has been enacted in Jersey through the *Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002*.

The *Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002* contains the following offences:

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

UN Security Council Resolution 1373 has been enacted in Jersey through the *Terrorism (United Nations Measures) (Channel Islands) Order 2001*.

The *Terrorism (United Nations Measures) (Channel Islands) Order 2001* contains the following relevant offences:

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

2.8.2 Financial Action Task Force (FATF) measures

FATF Recommendation 21 calls on countries to apply appropriate countermeasures to countries that do not apply or insufficiently apply the *FATF Recommendations*.

Where the *FATF* recommends that its members should implement appropriate countermeasures, the *Commission* supports these measures through the *Guidance Notes*.

3 Money Laundering Order

3.1 Overview

Article 2 of the *Money Laundering Order* provides that no person shall, in the course of any financial services business (defined later) carried on, form a business relationship or carry out a one-off transaction unless the person carrying on such business maintains:

- identification procedures;

- record-keeping procedures;
- internal reporting procedures (including the appointment of a reporting officer); and
- such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering and terrorist financing.

The *Money Laundering Order* also requires appropriate measures to be taken for the purposes of making employees aware of these procedures and enactments relating to money laundering and terrorist financing, and to train employees in the recognition and handling of transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering or terrorist financing.

3.2 Prospects

A number of amendments to the *Money Laundering Order* are under consideration as part of **Jersey's response to changes in international standards**. In particular, it is intended that the successor to the *Money Laundering Order* should provide for:

- The application of a **risk-based approach to customer due diligence measures**, and for such measures to clearly extend beyond identification procedures.
- **Clearer identification procedures** to be conducted where an applicant for business or customer is not an individual.
- **Evidence of identity to be reviewed** in cases where a financial services business knows or suspects that a customer is engaged in money laundering or terrorist financing, or where a business knows or suspects that the evidence that it holds is not satisfactory.
- **The appointment of a money laundering compliance officer**, who will be responsible to the business' management for monitoring compliance with requirements to prevent and detect money laundering and terrorist financing, and will be required to be registered with the *Commission*.
- **Maintenance of procedures** that monitor and test the effectiveness of procedures and training.

In addition, it is intended that the successor to the *Money Laundering Order* should more adequately provide for the circumstances in which **it should be possible to rely on another financial services business to have conducted some elements of customer due diligence measures**.

4 Scope of application of the Money Laundering Order

4.1 Schedule 2 to the Proceeds of Crime Law

Special obligations are placed on persons that conduct '**financial services business**'. What is financial services business is set out in Schedule 2 to the *Proceeds of Crime Law*.

Schedule 2 to the *Proceeds of Crime Law* defines financial services business activity as being:

- Any deposit-taking business, as defined in Article 1(1) of the *Banking Business (Jersey) Law 1991 (Banking Business Law)*.

- Any insurance business to which Article 5 of the *Insurance Business (Jersey) Law 1996 (Insurance Business Law)* applies.
- The business of being a functionary of a collective investment fund, as defined in Article 1(1) of the *Collective Investment Funds (Jersey) Law 1988 (Funds Law)*.
- Any investment business as defined in Article 1(1) of the *Financial Services (Jersey) Law 1998 (Financial Services Law)*.
- The business of providing trusteeship services (not being services as a trustee of an occupational pension scheme).
- The business of company formation.
- The business of company administration.
- The business of a bureau de change.
- The business of providing cheque cashing services.
- The business of transmitting or receiving money or any representation of monetary value by any means.
- The business of engaging in any of the activities within the meaning of the Annex to the *Second Banking Coordination Directive (No. 89/646/EEC)* (not being a business specified above, including lending and financial leasing). A full list of such activities can be found on www.jerseylegalinfo.je.

4.2 Prospects

Jersey is currently considering **how to implement FATF Recommendations 12 and 16**, which extend requirements to have procedures and measures to ‘designated non-financial businesses and professions’. This includes real estate agents, accountants, and lawyers.

5 Obligations imposed on financial services businesses

5.1 Obligation to have procedures of internal control and communication

As already noted, Article 2 of the *Money Laundering Order* provides that no person shall, in the course of any financial services business carried on, form a business relationship or carry out a one-off transaction unless the person carrying on such business maintains certain procedures and takes certain measures. In addition, Article 2(1)(a)(iv) of the *Money Laundering Order* requires a financial services business to have such other procedures of internal control and communication as may be appropriate for the purposes of forestalling, detecting and preventing money laundering.

On 27 January 2006, the *Court of Appeal* upheld a decision made by the *Royal Court* to convict persons for failing to comply with Article 2(1)(a) of the *Money Laundering Order*. The *Court of Appeal* agreed that **the obligation under Article 2(1)(a), to maintain procedures for the purposes prescribed in the Money Laundering Order, is an absolute one** and the ruling makes it clear that even a single breach is enough to constitute an offence.

The *Commission's* view is that this case emphasises the importance for financial services businesses to maintain adequate procedures to combat money laundering on an ongoing basis.

5.1.1 Verification of identity of the applicant for business and any parties on whose behalf the applicant acts

Article 2(1)(a) of the *Money Laundering Order* requires a financial services business to establish and maintain customer identification procedures that involve identification and verification of identity in order to form a business relationship or carry out a one off transaction.

Specific requirements for customer identification procedures are contained within Articles 3 to 7 of the *Money Laundering Order*. In particular, Article 5 of the *Money Laundering Order* provides that such procedures must require 'reasonable measures' to be taken for the purpose of establishing the identity of any person on whose behalf an applicant for business is acting, and Article 6 says that identification procedures need not be adopted in certain cases.

Under Article 5, where an applicant for business is a trustee, reasonable measures will generally mean being able to rely on a written assurance from a trustee that: (i) is prudentially supervised; and (ii) located in a country that is considered to have legislation in place to counter money laundering and terrorist financing that is considered to be equivalent to *Jersey's*; (*an equivalent jurisdiction*). Such an assurance must include confirmation that the trustee is aware of the true identity of the underlying principals, i.e. settlors/named beneficiaries, and that there are no anonymous principals. The *Guidance Notes* provide that, ideally, the identity of the underlying principals, in particular those who are supplying and have control over the funds, should be disclosed by the trustee to the business establishing the relationship with the trustee, and the written assurance provided be supported by copies of the documentary evidence of identity held by the trustee.

Where a **trustee** is not regulated or is not based in an equivalent jurisdiction, the *Guidance Notes* state that the identity of the settlor and all of the named beneficiaries should be ascertained by the business establishing the relationship with the trustee.

Inter alia, Article 6 of the *Money Laundering Order* does not require identification procedures to be conducted where there are reasonable grounds for believing that the applicant for business is itself a financial services business in *Jersey* that is bound by the *Money Laundering Order* or is a person covered by the *European Union Money Laundering Directive* (i.e. any member of the *European Economic Area*). This concession is interpreted as extending to establishing the identity of any person on whose behalf the applicant for business is acting, and is relevant to trustees that are supervised by the *Commission*.

5.1.2 Verification of identity in the case of an applicant that is not an individual

Article 3 of the *Money Laundering Order* requires the production by an applicant for business of satisfactory evidence of identity, or the taking of such measures, specified in procedures, as will produce satisfactory evidence of identity.

In the case of an applicant for business that is not an individual, the *Guidance Notes* set out procedures to be applied to identify and verify the identity of the beneficial owners and controllers of the applicant.

5.1.3 Verification of identity in the case of business that is introduced by another financial services business

Article 3 is also relevant in the case of business that it introduced to a financial services business by another financial services business.

In the case of an applicant for business that it introduced by another financial services business, then the *Guidance Notes* provide that, where that other financial services business is: (i) regulated; and (ii) located in *Jersey* or an equivalent jurisdiction, then it will be possible to rely upon a certificate of introduction from that other business, and will not be necessary to duplicate identification procedures.

5.1.4 Obligation to draw up and retain documents

Article 8(1)(a) of the *Money Laundering Order* requires a financial services business to make and retain the following records:

- copies of evidence of identity obtained in accordance with Articles 3 or 5; or
- information as to where a copy of the evidence can be obtained; or
- sufficient information as to enable the details of a person's identity to be re-obtained, but only where it is not reasonably practicable to either obtain a copy of the evidence, or to retain information as to where a copy can be obtained.

Article 8(2) requires a financial services business to retain records in relation to evidence of identity for at least five years from the end of a relationship with a customer (or completion of a one-off transaction).

Article 8(1)(b) also requires a financial services business to make and retain a record containing details of every transaction carried out with or for a customer in the course of financial services business. Under Article 8(2), records relating to transactions must be held for at least five years from the date when all activities relating to the transaction were completed.

5.1.5 Training and awareness

Article 2(1)(b) requires that a financial services business must, in relation to employees whose duties relate to the provision of financial services:

- Take appropriate measures from time to time for the purposes of making them aware of: the identification, record keeping and internal reporting procedures, and such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering or terrorist financing; and the enactments in *Jersey* relating to money laundering and terrorist financing.
- Provide those employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is or appears to be engaged in money laundering or terrorist financing.

5.2 Reporting procedures

Article 9 requires that a financial services business must establish and maintain reporting procedures which:

- Identify a person to whom a report is to be made – a money laundering reporting officer (*MLRO*).
- Require that a report is made of any information or other matter coming to the attention of any member of staff in the course of their business activity which, in the opinion of that person, gives rise to knowledge or suspicion that another person is engaged in money laundering or terrorist financing.
- Require that a report is considered by the *MLRO* (or by another designated person) in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report gives rise to knowledge or suspicion of money laundering or terrorist financing.
- Allow the *MLRO* (or a designated person) to have reasonable access to other information which may be of assistance in considering the report.
- Ensure that the information or other matter contained in a report is disclosed as soon as is reasonably practicable by the *MLRO* (or designated person) to a police officer, where the *MLRO* (or designated person) knows or suspects that another person is engaged in money laundering or terrorist financing.

5.3 Guidance Notes

This *Guidance Notes* are issued by the *Commission* pursuant to its powers under Article 8 of the *Financial Services Commission (Jersey) Law 1998* and in the light of provisions of Article 37 of the *Proceeds of Crime Law* and Article 23(6) of the *Terrorism Law*, which anticipate that anti-money laundering and counter-terrorist financing procedures will be prescribed for persons carrying on financial services business.

Failure to comply with the *Money Laundering Order* is a criminal offence under Article 37(4) of the *Proceeds of Crime Law*. In determining whether a financial services business has complied with any of the requirements of the *Money Laundering Order*, the *Royal Court* is, pursuant to Article 37(8) of the *Proceeds of Crime Law*, required to take account of the *Guidance Notes*, as amended from time to time.

Similarly, in determining whether a person has committed an offence under Article 23 of the *Terrorism Law* (the offence of failing to report), the *Royal Court* is required to take account of the *Guidance Notes*.

6 Supervision for compliance with requirements to prevent and detect money laundering or terrorist financing

6.1 Role of the Commission

Compliance with the *Money Laundering Order* and *Guidance Notes* is considered by the *Commission* in the conduct of its supervisory examinations of operators of collective investment schemes, deposit-takers, insurance businesses, investment businesses, and trust company businesses.

The ability of a supervised financial services business to demonstrate compliance with the *Money Laundering Order* and *Guidance Notes* will therefore be directly relevant to its supervised status and the *Commission's* assessment of the fitness and propriety of its principals.

Non-compliance with the *Guidance Notes* may be regarded by the *Commission* as an indication of:

- conduct that is not in the best economic interests of *Jersey* under Article 6 of the *Funds Law*;
- improper conduct under Article 10 of the *Banking Business Law*;
- improper conduct under Article 7 of the *Insurance Business Law*;
- a lack of fitness and propriety under Article 9 of the *Financial Services Law*; and/or
- a failure to comply with certain fundamental principles within the *Insurance Business Codes of Practice* issued pursuant to the *Insurance Business Law*, and the *Trust Company Business and Investment Business Codes of Practice* issued pursuant to the *Financial Services Law*.

6.2 Examination visits

The *Commission* conducts three types of examination visit: **discovery; risk-themed; and focused**. The aim of the *Commission* in conducting risk-themed examinations is to concentrate on a specific area of conduct across a segment of the industry. For example, in 2005, the chosen theme for trust company businesses supervised under the *Financial Services Law* was risk management systems and controls as they relate to the underlying customer base of such businesses. Examinations encompassed an assessment of written risk management policies and procedures and *Commission* officers reviewed, on a sample basis, customer records and files, and held discussions with management and staff involved in operational and compliance matters. Results were then measured against each business' written procedures and what might be considered best practice in this area. The results of this review have been published.

Focused examinations involve the preparation of a self-assessment questionnaire by the business. This questionnaire is intended to provide an overview of a supervised financial services business and the functions that it carries out. Inter alia, the questionnaire used for the examination of trust company businesses requests information on:

- Compliance and risk structure.
- Anti-money laundering training delivered to new and existing members of staff.
- Reviews undertaken by the compliance function, and their frequency.
- Any accounts or customers that are subject to sanctions.
- Suspicious activity reports made to the police and internal reports that did not result in such a report.

The questionnaire also requires a copy of procedures, compliance and money laundering manuals to be provided to the *Commission*.

6.3 Breaches of Money Laundering Order detected by Commission

The present policy of the *Commission* is that, if it should come across an apparent breach of the *Money Laundering Order* in the course of its supervision, including as a result of an onsite examination, the *Commission* will refer it to the *Attorney General* if the breach is considered to be sufficiently serious. It should be stressed, however, that a decision on whether to prosecute a breach of the *Money Laundering Order* will be a matter solely for the *Attorney General*.

The *Commission* will generally regard a breach of the *Money Laundering Order* as sufficiently serious to the extent that it poses a threat to clients or potential clients or to the reputation of the Island and/or where it casts doubt on the integrity, competence or financial standing of the person concerned. It will also be relevant if the breach was deliberate or premeditated rather than accidental, or if the person (individual or body corporate) has failed to report a material breach to the *Commission*.

Failure, inability or refusal to cooperate with the *Commission* to rectify a breach, and a history of past breaches or poor regulatory compliance (which may give grounds to believe that the breach is likely to be repeated and/or is part of a systemic failure), will also be taken into account.

Such a referral took place in 2005, following an examination of a trust company business. The business concerned and one of its directors were ultimately prosecuted, convicted and fined.

The above list of relevant factors is not intended to be exhaustive. But it should be enough to indicate that **referrals to the Attorney General by the Commission will be judged on their merits on a case-by-case basis** and will not be made on every occasion a breach of the *Money Laundering Order* is identified.

Supervised financial services businesses and their directors should however be in no doubt that they put themselves at potential risk if they do not take adequate steps to ensure that they are compliant with the *Money Laundering Order*. In assessing their compliance with the *Money Laundering Order* they should pay close attention to the *Guidance Notes*.

6.4 Role of the Joint Financial Crimes Unit (JFCU)

Under Article 10 of the *Money Laundering Order*, where the *Commission* (and any person acting in the course of any investigation under regulatory legislation) obtains any information and is of the opinion that the information indicates that any person has, or may have, been engaged in money laundering or terrorist financing, then the *Commission* must disclose that information to a police officer – in practice the *JFCU* – as soon as is reasonably practicable.

The *Commission* also works closely with the *JFCU* at operational level. For example, where a suspicious activity report raises issues at a particular financial services business, then the *JFCU* will discuss those issues with the *Commission*, which will then take appropriate action. Periodically, the *JFCU* also provides details to the *Commission* of those businesses that have failed to submit any suspicious activity reports.

6.5 Prospects

Whilst the most significant part of *Jersey's* finance industry – operators of collective investment schemes, deposit-takers, insurance businesses, investment businesses, and trust company businesses – is overseen for compliance with obligations to prevent and detect money laundering and terrorist financing, there are currently no provisions in place to provide for the oversight of other types of financial services business.

In line with *FATF* Recommendations 23 and 24, consideration will be given as to how *Jersey* might extend its regime for overseeing compliance with special obligations to counter money laundering and terrorist financing to include all financial services business. Plans are already well developed for money services businesses – those in the business of a bureau de change, the business of providing cheque cashing services, or the business of transmitting or receiving money or any representation of monetary value by any means.

7 Law enforcement

7.1 The JFCU

The *JFCU* is a partnership between the *States of Jersey Police Force* and the *States of Jersey Customs and Excise Department*. The *JFCU* receives all suspicious activity reports, maintains Jersey's financial intelligence system, and conducts money laundering and terrorist financing investigations.

In 2005, the *JFCU* received 1162 suspicious activity reports (three year average: 1378), and 362 requests for assistance from other jurisdictions (three year average: 488).

7.2 The Law Officers' Department

The *Law Officers' Department* includes Her Majesty's *Attorney General* and Her Majesty's *Solicitor General*.

The *Attorney General* heads the *Law Officers' Department*, and is Jersey's senior prosecutor and legal advisor to the government. Inter alia, he has statutory powers for the investigation of fraud, and persecutory powers in respect of money laundering and terrorist financing offences and confiscation. His office acts as the central authority in mutual assistance matters.

8 International co-operation

8.1 Commitment

Jersey places immense importance on providing assistance to other jurisdictions in the fight against crime, and has developed a large arsenal of powers to help foreign authorities.

The *JFCU* is a member of the *Egmont Group* and the *Commission* has concluded a number of bilateral memoranda of understanding with overseas financial services regulators, as well as being a signatory to the *International Organisation of Securities Commissions'* multilateral memorandum of understanding.

8.2 Assistance that can be given

Jersey can provide most forms of **legal assistance** to all countries. However under legislation used to freeze and confiscate proceeds of crime, not every country or territory can currently be assisted. That said, Jersey is able to assist around 150 states in respect of the proceeds of drug trafficking and around 40 states in respect of the proceeds of crime.

Legal assistance available includes powers to:

- Ask questions and obtain documents in cases of serious or complex fraud – through the *Investigation of Fraud (Jersey) Law 1991*.
- Obtain documents and witness statements for formal evidence with the option to cross examine witnesses under oath through the *Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983* and the *Criminal Justice (International Co-operation) (Jersey) Law 2001 (Criminal Justice Law)*.

- Freeze and confiscate the proceeds of crime and terrorist financing through the *Proceeds of Crime Law*, the *Drug Trafficking Offences Law*, the *Criminal Justice Law* and the *Terrorism Law*.
- Obtain documents (together with search and seizure powers) through the *Proceeds of Crime Law*, the *Drug Trafficking Offences Law*, the *Criminal Justice Law* and the *Terrorism Law*.

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The *Jersey Financial Services Commission* is responsible for the regulation, supervision and development of the financial services industry in *Jersey*.

The Commission is a statutory body corporate, set up under the *Financial Services Commission (Jersey) Law 1998*.

Abbreviations

Banking Business Law

Commission

Criminal Justice Law

Drug Trafficking

Offences Law

Equivalent jurisdiction

FATF

Financial Services Law

Funds Law

Guidance Notes

Insurance Business

Law

JFCU

Listed person

Money Laundering

Order

MLRO

Banking Business (Jersey) Law 1991

Jersey Financial Services Commission

Criminal Justice (International Co-operation) (Jersey) Law 2001

Drug Trafficking Offences (Jersey) Law 1988

A country that has legislation in place to counter money laundering and terrorist financing that is considered to be equivalent to Jersey's

Financial Action Task Force

Financial Services (Jersey) Law 1998

Collective Investment Funds (Jersey) Law 1988

Anti-Money Laundering Guidance Notes for the Finance Sector

Insurance Business (Jersey) Law 1996

Joint Financial Crimes Unit (Jersey's financial intelligence unit)

any person designated by the UN Sanctions Committee under

UN Security Council Resolution 1390

Money Laundering (Jersey) Order 1999

Money Laundering Reporting Officer

Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
Terrorism Law	Terrorism (Jersey) Law 2002
UN	United Nations

Bibliography

- Bazley, J./Winch, D.*: Money Laundering for Lawyers, LexisNexis Butterworths, 2004.
- Biggs, S./Farrell, S./Padfield, N.*: The Proceeds of Crime Act 2002, Butterworths LexisNexis, 2002.
- Clark, A./Burrell, P.*: A Practitioner's Guide to International Money Laundering Law and Regulation, City & Financial Publishing, Old Woking, 2003.
- Graham, T.*: Butterworths International Guide to Money Laundering Law and Practice, Butterworths LexisNexis, 2003.
- How to Combat Money Laundering and Terrorist Financing, Central Banking Publications, London, 2005
- IMF and World Bank*: Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, IBRD and World Bank, Washington, 2004.
- IMF and World Bank Group*: Financial Intelligence Units – An Overview, IMF, Washington, 2004.
- Jersey Financial Services Commission*: Draft Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, Jersey, May 2006.
- Legal Department – IMF*: Suppressing the Financing of Terrorism, IMF, Washington, 2003.

Mark Gerard Ferbrache read law at Cambridge University. He was called to the Bar of England and Wales in 1987 and the Guernsey Bar in 1988. Since 2002 he was head of litigation at another leading Guernsey firm, specializing in international commercial disputes including freezing orders and asset tracing. He regularly advises in relation to complex trust, banking and insurance disputes. His clients include the Guernsey Financial Services Commission. Recent cases include representation of the administrators of Messenger Insurance PCC Ltd. This is the first ever administration of a PCC. This litigation was the largest piece of litigation in both Guernsey and the High Court in 2005/2006. He also advised the Royal Bank of Scotland International in the Equatorial Guinea case which went to the Privy Council. He is a member of: Society of Trust and Estate Practitioners (committee member); Association of Contentious Trust and Probate Specialists; Guernsey Bar sub-committee on trusts; Fiduciary Sector Policy Forum (committee member); Royal Court Civil Procedure Review Committee.

Firm's profile

Ferbrache Richardson Advocates is one of the leading firms in the Channel Islands providing a comprehensive range of legal services to both private individuals and the international business community. We are often at the forefront of innovations in Guernsey Law. The firm represents a wide variety of international institutions and businesses including clearing and investment banks, insurance companies, investment and fiduciary businesses. It also advises and assists lawyers in other jurisdictions on matters of Guernsey law on a daily basis.