

Overview of changes proposed to Jersey's AML/CFT framework

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Jersey Financial
Services Commission



Agenda

- › Jersey Financial Crime Strategy Group
- › 2012 FATF Recommendations
- › Proposed changes to Jersey's AML/CFT framework
 - › Consultation Paper
- › Proposed Registry Law



Jersey Financial Crime Strategy Group

- › Responsible for co-ordinating the actions of the island to mitigate the risk of financial crime.
- › Co-ordination of risk assessments
- › Review and development of financial crime policies and legislation
- › Appropriate risk-based application of resources





Jersey Financial
Services Commission



Government of
JERSEY



**Income Tax
Office**



2012 FATF Recommendations

- › Replaced 2003 Recommendations
- › Strengthen areas of higher risk
- › Deal with new threats
- › Clearer on transparency
- › Tougher on corruption
- › Formal integration of the risk-based approach



Proposed changes to AML/CFT framework

- › Changes to legal framework:
 - › AML/CFT policies and coordination
 - › ML and confiscation
 - › TF and financing of proliferation (FP)
 - › Preventive measures
 - › Powers and responsibilities of authorities
 - › Transparency of legal persons/arrangements



Proposed changes to AML/CFT framework

- › AML policies and coordination
 - › R.1 (NRA)
 - › FIs and DNFBPs required to consider outcome of NRA when performing risk assessments



Proposed changes to AML/CFT framework

- › ML and confiscation
 - › R.4 (confiscation and provisional measures)
 - › Possibility of confiscating “gifts” made within a period of 5 years (clawback period) before criminal offending
 - › Includes property settled into discretionary trust



Proposed changes to AML/CFT framework

- › TF and FP
 - › R.8 (NPOs)
 - › Additional obligations on NPOs that may be “vulnerable to TF abuse”
 - › Supervision for compliance with obligations
 - › Potential range of obligations



Proposed changes to AML/CFT framework

- › Preventive measures

- › R.10 (CDD)

- › Where customer is an individual:

- › Verify that any person acting on behalf of customer is authorised to do so; and

- › Find out and verify identity of that party

- › Mitigate risks where verification of identity delayed



Proposed changes to AML/CFT framework

- › Preventive measures
 - › R.10 (CDD)
 - › Simplified CDD measures to be replaced with statutory exemptions
 - › Removal of requirement to find out identity of significant third parties
 - › However, exemptions subject to NRA findings
 - › No CDD requirement if “tipping-off” concern



Proposed changes to AML/CFT framework

- › Preventive measures
 - › R.11 (record-keeping)
 - › Records to be made available “swiftly” to domestic authorities, rather than “on a timely basis”
 - › Records to include results of analysis (e.g. inquiries to establish the background and purpose of complex, unusual large transactions)



Proposed changes to AML/CFT framework

- › Preventive measures
 - › R.12 (PEPs)
 - › Foreign PEPs
 - › Mandatory enhanced monitoring
 - › Higher risk domestic PEPs
 - › Enhanced measures
 - › Guidance on “higher risk”?



Proposed changes to AML/CFT framework

- › Preventive measures
 - › R.13 (correspondent banking)
 - › Extension of enhanced CDD to “similar relationships”, e.g. securities transactions or funds transfers
 - › R.15 (new technology)
 - › Timing of risk assessment to be clarified - prior to launch or use of products, practice and technology
 - › Measures to manage and mitigate risks



Proposed changes to AML/CFT framework

- › Preventive measures
 - › R.17 (reliance)
 - › Additional condition to be met where reliance is placed on group third party: any higher country risk is adequately mitigated by group's AML/CFT policies
 - › R.18 (internal controls and foreign branches and subsidiaries)
 - › Information sharing at group level



Proposed changes to AML/CFT framework

- › Preventive measures
 - › R.22 (DNFBPs)
 - › Estate agents to apply CDD measures to both parties to any real estate transaction in which they are involved

Proposed changes to AML/CFT framework

- › Powers and responsibilities of authorities
 - › R.26 (regulation and supervision of FIs)
 - › AML/CFT supervisors to be required to apply a risk-based approach



Proposed changes to AML/CFT framework

- › Powers and responsibilities of authorities
 - › R.28 (regulation and supervision of DNFBPs)
 - › Measures to prevent criminals or their associates being professionally accredited, or holding significant or controlling interest, or holding a management function
 - › AML/CFT supervisors to be required to apply a risk-based approach



Proposed changes to AML/CFT framework

- › Transparency of legal persons
 - › R.24
 - › All “basic” information should be publicly available, including:
 - › List of directors (or equivalent)
 - › “Basic regulating powers” for foundations
 - › Changes to “basic” information to be disclosed to Companies Registry within 21 days



Proposed changes to AML/CFT framework

- › Transparency of legal persons
 - › R.24
 - › Legal persons to nominate: (i) natural person; or (ii) TCB supervised by JFSC (nominated person), to provide “basic” and beneficial ownership information to authorities.
 - › Name of nominated person to be held by registrar
 - › Intermediate and ultimate beneficial owners to cooperate with legal person and/or nominated person



Proposed changes to AML/CFT framework

- › Transparency of legal persons
 - › R.24
 - › Directors (and equivalent)/liquidator, and nominated person to maintain “basic” and beneficial ownership information for five years post dissolution
 - › Comptroller of Taxes to have timely access to beneficial ownership data
 - › Express prohibition on bearer shares/warrants



Proposed changes to AML/CFT framework

- › Transparency of legal persons
 - › R.24
 - › Use of nominee shareholders
 - › Option A – permit only TCBs supervised by JFSC; or
 - › Option B - permit nominees licensed and supervised in Jersey and any equivalent jurisdiction; or
 - › Option C - permit any person so long as identity of nominator recorded by: (i) company; and (ii) Registrar



Proposed changes to AML/CFT framework

- › Transparency of legal persons
 - › R.24
 - › Express prohibition of “nominee” directors



Proposed changes to AML/CFT framework

- › Transparency of legal arrangements
 - › R.25
 - › Trusts Law or AML/CFT legislation
 - › Trustee to hold information on agents and service providers, e.g. investment advisor, manager, accountant, tax advisor etc.
 - › Trustee to disclose fiduciary status to FIs and DNFBPs
 - › “Gateway” to allow trustee to provide confidential information to FIs and DNFBPs



Proposed changes to AML/CFT framework

- › Transparency of legal arrangements
 - › R.25
 - › Provisions extend to any express trust governed under Jersey law
 - › Including non-resident trustees of Jersey trusts where no Jersey property or income



Proposed changes to AML/CFT framework

› Consultation

› Published 27 July 2018

<http://www.jerseyfsc.org/media/2083/2018-07-27-jfcsg-consultation-on-fatf-recommendations.pdf>

› Closes end September 2018



Registry Law

Tom Fothergill
Government Lead



Registry Law (1/2)

- › Register of Entities (Jersey) Law 201-
 - › Bring together registration obligations for entities and LPs in one statute
 - › Clarify the powers of the registrar, including enforcement
 - › Provide a foundation for using innovative technology
 - › Replace COBO for the majority of companies



Registry Law (2/2)

- › Matters arising out of the Registry Law
 - › Register of legal owners (public)
 - › Register of beneficial owners (private)
 - › Register of directors, officers and secretaries (public)
 - › Register of disqualifications (public)
 - › Signatures, authorisations and digital communications

NRA update

Andrew Le Brun- NRA Lead
Sally O'Connell - Barclays
Robert Surcouf - JTC



Overview

- › Higher risk areas
- › Private sector perspective



Housekeeping

- › Team leader change
 - › National ML vulnerability
 - › Jamie Biddle
- › Updated timeline
 - › First draft to World Bank – March 2019



Data collection (1/9)

- › JFSC Phase I
 - › Good response rate - 98%
 - › First time exercise undertaken on this scale
 - › Some data quality issues - to be addressed through updates to guidance and data collection forms
 - › Sector reporting aggregated - limited cleansing



Data collection (2/9)

- › JFSC Phase II
 - › Step 1 – 30 September
 - › Step 2 – 31 October
 - › Step 3 – 16 November
- › JFSC 2018 data
 - › Q1 2019 – details to follow



Data collection (3/9)

- › Government survey of private sector
 - › Timeline
 - › Week commencing 24 September to 31 October
 - › Overlap with JFSC Phase II data collection
 - › Link to be publicised by trade bodies and associations, Jersey Finance and JFSC
 - › Voluntary and anonymous participation



Data collection (4/9)

- › Government survey of private sector
 - › Completion
 - › Many “closed” responses, e.g.
 - › Yes/no/not sure
 - › Never/rarely/quite often/very often/always
 - › Select options/bands
 - › Not at all (0) to very well (10)
 - › “No experience”



Data collection (5/9)

- › Government survey of private sector
 - › Completion (cont'd)
 - › Time to complete?
 - › Questions to Island ARK and Chief Executive's Office - Government



Data collection (6/9)

- › Government survey of private sector
 - › Sections
 - › About your organisation
 - › Preventive measures – organisation and industry
 - › Integrity
 - › Knowledge and training
 - › Compliance culture and effectiveness
 - › Reporting
 - › Customer due diligence



Data collection (7/9)

- › Government survey of private sector
 - › Sections
 - › Supervision and enforcement of AML/CFT requirements by JFSC
 - › Enforcement of AML/CFT requirements by law enforcement agencies
 - › ML/TF threats and vulnerabilities – organisation and Island

Data collection (8/9)

- › Government survey of private sector
 - › Use of data
 - › NRA teams – report and action plan
 - › Reliant upon good evidence
 - › Smarter regulation and supervision



Data collection (9/9)

- › Other Government surveys
 - › Consulting firms and law firms
 - › Foreign competent authorities
 - › JFCU-FIU
 - › JFCU-Operations
 - › Law Officers' Department
 - › JFSC



Higher risk areas (1/2)

- › National ML vulnerability team
 - › Legal persons and legal arrangements
 - › Registers – aircraft and shipping
 - › Emerging areas
 - › Crypto currencies
 - › Crowd-funding



Higher risk areas (2/2)

- › Securities ML vulnerability
 - › Non-regulated issuers
- › TCSP ML vulnerability
 - › Family offices
- › Other vulnerabilities
 - › Immovable property
 - › Gambling

