



Follow-on consultation on AML/CFT scope exemptions

Consultation on aligning Jersey's AML/CFT registration regime with the 2012 FATF Recommendations

Issued: 14 September 2022

Consultation Paper

We invite comments on this consultation paper by **14 October 2022**. If you require assistance, clarification or wish to discuss any aspect of the proposals prior to formulating a response, it is of course appropriate to contact us.

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The JFSC's policy is to provide the content of responses for inspection unless specifically requested otherwise.

It is the policy of JFL (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.). This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

2009 Guidance Note	Guidance note on natural persons undertaking the activity of acting as a director under the FSJL
2021 Consultation	Consultation on AML/CFT scope exemptions issued 17 December 2021
Amending Law	Proceeds of Crime (Amendment No. 6) (Jersey) Law 2022
Amending Order	Money Laundering (Amendment No. 12) (Jersey) Order 202-
Amending Regulations	Proceeds of Crime (Savings and Consequential) (Jersey) Regulations 202-
AML	Anti-Money Laundering
AML/CFT Handbook	the JFSC's Handbook for the Prevention and Detection of Money Laundering and Countering the Financing of Terrorism
AML/CFT obligations	AML/CFT obligations under the Anti-Money Laundering and Counter-Terrorism Legislation and the AML/CFT Handbook
CFT	Countering the Financing of Terrorism
Commencement Order	Proceeds of Crime (Amendment No. 6 of Law - Commencement) (Jersey) Order 202-
Conduct of business and prudential regulatory Laws	Alternative Investment Funds (Jersey) Regulations 2012 Banking Business (Jersey) Law 1991 Collective Investment Funds (Jersey) Law 1988 Financial Services (Jersey) Law 1998 Insurance Business (Jersey) Law 1996
DNFBP	Designated Non-Financial Businesses and Professions
DSP	Designated Service Provider
DSP Direct Customer	Means a customer of a DSP that is itself a Schedule 2 Business in receipt of DSP services from a DSP
DSP Direct Customer MLCO	Means a DSP Direct Customer's MLCO, being an individual appointed by the DSP to fulfil the MLCO function on behalf of its DSP Direct Customer
DSP Direct Customer MLRO	Means a DSP Direct Customer's MLRO, being an individual appointed by the DSP to fulfil the MLRO function on behalf of its DSP Direct Customer
DSP Indirect Customer	Means a customer of a DSP Direct Customer and includes third parties for whom the DSP Indirect Customer acts
DSP services	Means services provided by a DSP to a DSP Direct Customer that support the DSP Direct Customer in fulfilling its AML/CFT obligations
Existing outsourcing mechanism	The current, and ongoing, mechanism for outsourcing agreements to be entered into between Schedule 2 businesses and outsourcing service

	providers for the fulfilment of certain activities that Schedule 2 businesses must perform in order to meet their AML/CFT obligations
FATF	Financial Action Task Force
FATF Recommendations	The International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation
FI	Financial Institution
FSB	Fund Services Business
FSJL	Financial Services (Jersey) Law 1998
Government	Government of Jersey
IB	Investment Business
JFSC	Jersey Financial Services Commission
JPF	Jersey Private Fund
Minister	Minister for Treasury and Financial Services
MLO	Money Laundering (Jersey) Order 2008
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
Mutual Evaluation Report	Mutual Evaluation Report, specifically the Report on Fourth Assessment
PESP	<p>Previously Exempt Supervised Person – individuals and organisations which conduct as a business activities or operations within the recast Schedule 2, and who will be required to register with the JFSC by the end of the transitional period. PESPs are not currently subject to the requirement to register with the JFSC for one of the following reasons:</p> <ul style="list-style-type: none"> › by virtue of a scope exemption that means the PESP does not currently have AML/CFT obligations; › by virtue of a scope exemption that means the PESP does currently have AML/CFT obligations, but is not subject to a registration requirement; or › because their activities or operations have not previously been described in Schedule 2.
POCL	Proceeds of Crime (Jersey) Law 1999
recast Schedule 2	Schedule 2, as amended by the Amending Law
regulated service provider	a person providing services to a PESP who is registered under the Financial Services (Jersey) Law 1998
SBJL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Schedule 2	POCL's Second Schedule

Schedule 2 business	A business carrying on an activity specified in Schedule 2 that is required, by virtue of the SBJL, to register with the JFSC for AML/CFT purposes
Scope exemptions	Exemptions that exclude activity from the scope of activities caught by AML/CFT obligations in Jersey
States	States Assembly, the parliament of Jersey
TCB	Trust Company Business
Transitional period	The six month period expected to commence in January 2023 during which PESPs and DSPs will be required to register with the JFSC
VASP	Virtual Asset Service Provider
We / us	The JFSC

Table of Contents

1	Executive Summary	8
1.1	Overview	8
1.2	Background	8
1.3	Consultation and implementation timeline	10
1.4	What is proposed and why?	10
1.5	Further information to supplement the proposals	11
1.6	Who will be affected?	12
1.7	How will this affect me?	13
1.8	What action should I take?	13
2	Consultation	14
2.1	Basis for consultation	15
2.2	Responding to the consultation	15
2.3	Next steps.....	15
3	Proposals	15
3.1	Legislative Amendments – 3.2 to 3.6	15
3.2	Legislative amendments – POCL	16
3.3	Legislative amendments – SBJL	16
3.4	Legislative amendments – MLO	17
3.5	Legislative amendments – Financial Services (Jersey) Law 1998 (FSJL)	17
3.6	Legislative amendments – purely consequential	18
3.7	Guidelines on interpretation	18
3.8	Codes of Practice and Guidance for DSPs and their PESPs.....	20
4	Determining and documenting if you are affected	21
4.1	Purpose of this section	21
4.2	Exclusion from scope.....	21
4.3	Documenting your conclusion.....	22
5	Registration process for PESPs	23
5.1	Purpose of section.....	23
5.2	PESPs that do not receive services from DSPs	23
5.3	PESPs that receive services from DSPs.....	23
6	Designated Service Providers	24

6.1	Overview	24
6.2	Registration process for DSPs.....	24
6.3	Registration process for PESTs receiving DSP services.....	26
6.4	Approaches to documenting arrangements as PESTs transition from unregistered Schedule 2 businesses to Schedule 2 businesses in receipt of a DSP's services ...	26
6.5	Registration process for Schedule 2 Businesses receiving DSP services on an ongoing basis.....	26
6.6	Key features of the proposals at Appendix B: Draft Codes of Practice and Guidance for Designated Service Provide	27
7	Summary of Questions.....	28
	Appendix A: Draft guidelines on interpretation under Article 36 of the POCL	30
	Appendix B: Draft Codes of Practice and Guidance for Designated Service Provide	31

1 Executive Summary

1.1 Overview

- 1.1.1 The proposals within this consultation paper are part of the [nationally coordinated](#) programme of work led by the Government of Jersey (Government) in partnership with other Island Agencies to implement the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation ([FATF Recommendations](#)).
- 1.1.2 This follow-on consultation seeks feedback from interested parties on further proposed legislative amendments and regulatory rules, guidelines and guidance that seek to align Jersey's Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) scope exemptions with the FATF Recommendations (see Sections 3.2 to 3.6).
- 1.1.3 We would appreciate feedback using the template found at Section 7.
- 1.1.4 Feedback is sought using the template found at Section 7 on the proposed legislation, regulatory rules (Codes of Practice), guidelines and guidance that are designed to support Industry in understanding and complying with the revised scope of application of Jersey's AML/CFT regime (see Sections 3.7 and 3.8).
- 1.1.5 Some individuals and organisations may not be clear on whether they are within the scope of the recast Schedule 2 and consequently be subject to AML/CFT obligations in the near future. Feedback is sought using the template found at Section 7 on whether our Guidelines on interpretation (see Section 3.7 and [Appendix A](#)) are clear in supporting the analysis of whether or not individuals and organisations are within scope (see also Section 3.8.2).
- 1.1.6 Previously Exempt Supervised Persons (PESP) will be subject to AML/CFT obligations for the first time and will be required to register with the JFSC. Information on registration for PESPs is found at Section 5.
- 1.1.7 We understand that many PESPs are currently provided with services by a person registered under the Financial Services (Jersey) Law 1998 (regulated service providers) with the result that these PESPs benefit from a scope exemption. These regulated service providers who currently provide services to PESPs are likely to support these PESPs in fulfilling their AML/CFT obligations on an ongoing basis. Feedback is sought using the template found at Section 7 on whether the JFSC's proposed regulatory rules and guidance provide sufficient clarity to enable PESPs to assume their AML/CFT obligations, and for Designated Service Providers (DSP) to perform the activities that will support PESPs in fulfilling their AML/CFT obligations (see Section 3.8, and also Section 6).

1.2 Background

- 1.2.1 In December 2015, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) agreed its [Report on Fourth Assessment Visit](#) of Jersey (**Mutual Evaluation Report**) regarding the Island's compliance with the [FATF Recommendations](#). This compliance assessment was conducted against the 2003 FATF Recommendations, which were the international standards at the time. Jersey will next be assessed by MONEYVAL during 2023, with the resultant report expected in 2024. This assessment will be

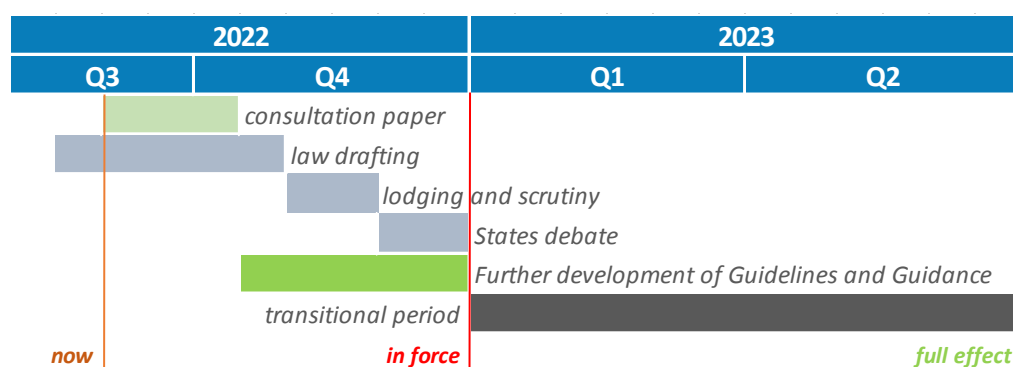
against the current international standards, known as the 2012 FATF Recommendations.

- 1.2.2 The Mutual Evaluation Report concluded that certain scope exemptions from AML/CFT obligations in Jersey were not compatible with the FATF Recommendations which allow for exemptions only where:
 - 1.2.2.1 “there is a proven low risk of money laundering and terrorist financing; this occurs in strictly limited and justified circumstances; and it relates to a particular type of financial institution or activity, or DNFBP”; or
 - 1.2.2.2 “a financial activity (other than the transferring of money or value) is carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of money laundering and terrorist financing.”
- 1.2.3 Specifically, the Mutual Evaluation Report highlighted concern about the rationale for scope exemptions that mean businesses are not required to comply with AML/CFT obligations. Responding to the Mutual Evaluation Report will enable Jersey to demonstrate stronger compliance with the 2012 FATF Recommendations.
- 1.2.4 On 17 December 2021, the Jersey Financial Services Commission (JFSC) and Government published a [consultation](#) (2021 Consultation) seeking feedback on proposals to amend Jersey’s AML/CFT scope exemptions regime.
- 1.2.5 The 2021 Consultation summarised the evolution of Jersey’s AML/CFT regime including how the second schedule (Schedule 2) of the Proceeds of Crime (Jersey) Law 1999 (POCL) works to specify which activities are financial services business. Financial services businesses are required to be registered with the JFSC either under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (**SBJL**) or one of the conduct of business and prudential regulatory Laws. Once registered such businesses are supervised by the JFSC for AML/CFT purposes.
- 1.2.6 Links between Schedule 2, and the conduct of business and prudential laws (see **conduct of business and prudential regulatory Laws** in the glossary) serve to specify which businesses in the financial services sector are required to comply with the AML/CFT regime in Jersey. However, the links between the conduct of business and prudential regulatory Laws, and the POCL have created scope exemptions for certain activities from AML/CFT obligations in a way that is not compatible with what is expected by the FATF Recommendations.
- 1.2.7 It was identified that the most pragmatic solution would be to remove the links between Schedule 2 and the conduct of business and prudential laws thereby clearly separating the regulatory scope of the AML/CFT obligations from the conduct of business and prudential obligations. Thereafter, where a business is to be subject to AML/CFT obligations, this will be the case irrespective of that business’s obligations in respect of conduct of business and prudential matters.
- 1.2.8 To achieve the separation between the scope of AML/CFT obligations, and conduct of business and prudential obligations, the main proposal within the 2021 Consultation was to “recast” Schedule 2 so that all activities and operations subject to AML/CFT obligations mirror the FI, DNFBP, and VASP definitions within the FATF Recommendations.
- 1.2.9 [Feedback](#) to the 2021 consultation was issued on 21 February 2022.
- 1.2.10 After this:

- 1.2.10.1 The proposed legislative amendments ([Proceeds of Crime \(Amendment No. 6\) \(Jersey\) Law 2022](#) (Amending Law)) were scrutinised, debated, then adopted by the States Assembly (**States**) on 31 March 2022. After this they were sanctioned by Order of Her Majesty in Council on 8 June 2022 and registered in the Royal Court on 17 June 2022. The Amending Law will come into force on a date specified by Ministerial Order, anticipated to be in January 2023. It is proposed that further legislative amendments will be simultaneously brought into force as described at 1.4.1.
- 1.2.10.2 Further engagement with Industry on the practical implementation of the Amending Law, and the consequential amendments to the regulatory framework took place through a series of workshops from March to June 2022.
- 1.2.11 This follow-on consultation reflects the outcome of those workshops and features the proposals to bring the Amending Law into force alongside various other proposals to support the transition for businesses that were previously exempt from AML/CFT obligations.

1.3 Consultation and implementation timeline

- 1.3.1 Outline of the consultation process.



1.4 What is proposed and why?

- 1.4.1 Article 1(3) of the Amending Law introduces Article 44A to the POCL which provides that the States Assembly may, by Regulations – (a) make any consequential and transitional provisions; (b) make amendments to this Law or any other enactment, that appear necessary or expedient in connection with the coming into force of the Amending Law. These are the Money Laundering (Amendment No. 12) (Jersey) Order 202- (Amending Order) and the Proceeds of Crime (Savings and Consequential) (Jersey) Regulations 202- (Amending Regulations). The Amending Law, Amending Regulations, and Amending Order will be brought into force by way of the Proceeds of Crime (Amendment No. 6 of Law - Commencement) (Jersey) Order 202- (Commencement Order).
- 1.4.2 In this regard:
- 1.4.2.1 The key features of these legislative provisions are explained in Sections 3.2 to 3.6.
- 1.4.2.2 Law drafting is in progress as outlined in the diagram at 1.3.1 and will be completed shortly after this consultation ends in October 2022, taking account of feedback received.

- 1.4.2.3 We propose that the transitional provisions will provide for a period of six months during which businesses whose activities are described in the recast of Schedule 2 (irrespective of whether a scope exemption previously existed in relation to those activities) will be required to make an application for registration with the JFSC. This will include businesses that we describe as PESP who are not currently subject to the requirement to register with the JFSC for one of the following reasons:
- › by virtue of a scope exemption that means the PESP does not currently have AML/CFT obligations;
 - › by virtue of a scope exemption that means the PESP does currently have AML/CFT obligations, but is not subject to a registration requirement; or
 - › because their activities or operations have not previously been described in Schedule 2.
- 1.4.3 Article 2 of the Amending Law provides that the Amending Law will come into force on a day specified by Ministerial Order (the Commencement Order). It is proposed that this is also the date on which the Amending Regulations, and Amending Order, will come into force. This will be the date on which the proposed six-month transitional period will also commence.
- 1.4.4 When in force, Article 1(2) of the Amending Law will substitute the existing Article 36 of the POCL. The new Article 36 and Article 36(2) provides that the JFSC may issue guidelines on the interpretation of any provision in Schedule 2, including any expression used in Schedule 2. Section 3.7 – Guidelines on interpretation – provides detail on our proposed approach to issuing such guidelines on interpretation under Article 36(2) of the Amending Law. Draft guidelines are provided at [Appendix A](#).
- 1.4.5 To support the introduction of Amending Law we propose to amend the regulatory framework by formalising provisions for Schedule 2 businesses who outsource activities to regulated service providers, Section 3.8 – Codes of Practice and Guidance for DSPs and their PESP – provides detail on the proposed codes of practice and associated guidance to support DSPs, and their Schedule 2 business customers in achieving compliance with the revised AML/CFT regime.
- 1.4.6 “DSP” is the term already applied to the Designated Service Providers to Jersey Private Funds (JPF). While the JPF DSP has distinct obligations, which are outlined in the [JPF Guide](#), a critical component of these obligations is the requirement of “ensuring compliance with all necessary Jersey AML/CFT requirements applicable to the JPF”.
- 1.4.7 With the revisions to the AML/CFT regime to be brought about through the proposals in this consultation, we consider that it is appropriate to use the term “DSP” to refer to all DSPs. JPF DSPs will retain their distinct obligations under the JPF Guide, but may agree with their JPF customers to adopt the approach to compliance with AML/CFT obligations set out in Sections 3.8, 5.3, 6, and supported by [Appendix B](#).

1.5 Further information to supplement the proposals

- 1.5.1 Section 4 – Determining and documenting if you are affected – provides an overview of the actions that individuals and organisations should take in order to determine if they are affected by the proposals in this consultation, and how to document their conclusions.

- 1.5.2 Section 5 – Registration process for PESPs – provides an overview of the practical steps that individuals and organisations must take if they are conducting any of the activities or operations as described in the recast of Schedule 2.
 - 1.5.2.1 Section 5.2 – PESPs that do not receive services from DSPs – provides information specifically for PESPs that operate independently of regulated service providers.
 - 1.5.2.2 Section 5.3 – PESPs that receive services from DSPs – provides information specifically for PESPs that operate in partnership with regulated service providers.
- 1.5.3 Section 6 – Designated Service Providers – provides information for DSPs, which are existing regulated service providers that wish to provide AML/CFT services to Schedule 2 businesses after the transitional period.

1.6 Who will be affected?

- 1.6.1 The proposals in this consultation paper will impact individuals and organisations which conduct, as a business, activities or operations within the recast Schedule 2 which are not currently subject to AML/CFT obligations, or are currently exempt from registration with the JFSC (PESPs).
- 1.6.2 Regulated service providers who currently provide services to PESPs, whether or not they intend to continue to provide AML/CFT services to PESPs in the future, will also be affected. For those regulated service providers intending to provide DSP services to their existing customers, they will need to register as a DSP. For those regulated service providers that do not intend to provide DSP services, they will need to consider the scope of services that they will provide to their existing PESP customers and may wish to make arrangements to support their existing PESP customers in complying with their ongoing AML/CFT obligations.
- 1.6.3 It is important to note that the act of performing an activity within the recast Schedule 2 does not automatically bring the same AML/CFT obligations or the requirement to register with us. This is because the substituted Article 36 of the POCL filters, at a high level, activities and operations so that they are only subject to AML/CFT obligations when conducted as a business (save for Non-Professional Trustees as described at 1.7.3), and Articles 10(1) and 10(3) of the SBJL detail the registration requirements for businesses who are performing those activities in or from within Jersey.
- 1.6.4 The Article 36 filter has the effect of excluding activities or operations that are not conducted as a business. This is a simplification of the scope exemptions regime where previously several individual exemptions may have produced the same net effect.
- 1.6.5 In addition to the filter that may exclude activities and operations from the scope of the recast Schedule 2, the JFSC will be issuing guidelines on the interpretation of provisions within the POCL. These guidelines are described at Section 3.7 and presented in draft at [Appendix A](#). The guidelines are designed to enable individuals and organisations to determine if they are subject to AML/CFT obligations.
- 1.6.6 A consequence of the 2021 consultation and the Amending Law is that the FATF definition of Virtual Asset Service Providers (**VASPs**) will be implemented in Jersey legislation when the Amending Law comes into force. This means that some businesses will be caught for the first time where they were not previously relying on a legislative scope exemption. While newly in scope, VASPs are not technically

“previously exempt”. However, VASPs will be subject to the same application and registration process as previously exempt individuals and organisations, so are referred to as PESPs within this consultation.

1.7 How will this affect me?

- 1.7.1 If you conduct business in or from within Jersey (save for Non-Professional Trustees as at 1.7.3), and are able to determine and demonstrate that the activities or operations that you undertake:
- 1.7.1.1 Are within the definitions of Financial Institution (FI), Designated Non-Financial Business or Profession (DNFBP), or Virtual Asset Service Provider (VASP) found in the recast Schedule 2 **BUT** are not conducted as a business; OR
 - 1.7.1.2 Are not within the definitions of FI, DNFBP, or VASP found in Schedule 2,
- then you will not be affected by these proposals.
- 1.7.2 If you are not able to meet the criteria at 1.7.1, specifically the activities or operations that you undertake in or from within Jersey:
- 1.7.2.1 Either:
 - › are conducted as a business; and
 - › are within the definitions found in the recast Schedule 2,then you are a PESP and will be required to apply for registration with the JFSC as a Schedule 2 business before the end of the six-month transitional period. We anticipate this to be on or before 30 June 2023.
- 1.7.3 However, if you are a trustee of an express trust acting otherwise than by way of business, then you will continue to be required to comply with your existing obligations in accordance with the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016. For the avoidance of doubt, Non-professional trustees will continue to be exempt from the requirement to register with the JFSC.

1.8 What action should I take?

- 1.8.1 Action is required by any person that considers they may be a PESP, and regulated service providers to PESPs.

PESPs

- 1.8.2 Section 4 – Determining and documenting if you are affected – provides an overview of the actions that individuals and organisations should take in order to determine if they are affected by the proposals in this consultation, and how to document their conclusions.
- 1.8.3 If you currently employ a scope exemption, or exemption from registration, believe that you may, or if the activities you conduct are described within the recast of Schedule 2, we encourage you to review your business in light of section 3.8.1, and [Appendix A](#).
- 1.8.4 If, following this review, you identify that you are a PESP and so will be required to apply for registration with the JFSC as a Schedule 2 business, we encourage you to plan how you will go about ensuring that you have adequate systems, procedures and controls in place to comply with the obligations on all businesses registered for

AML/CFT purposes under the SBJL. These obligations are detailed in the Money Laundering (Jersey) Order 2008 (MLO), and the [JFSC's AML/CFT Handbook](#).

- 1.8.5 This planning work should start now and may need to continue over the course of the transitional period outlined at section 1.3 (Consultation and implementation timeline). **Your application for registration must be with the JFSC prior to the end of the transition phase.**
- 1.8.6 Section 5 – Registration process for PESPs – provides an overview of the practical steps that individuals and organisations must take if they are conducting any of the activities or operations as described in the recast Schedule 2.
- 1.8.7 Section 5 includes information for both types of PESPs:
 - 1.8.7.1 Section 5.2 – PESPs that do not receive services from DSPs – provides information specifically for PESPs that operate independently of regulated service providers.
 - 1.8.7.2 Section 5.3 – PESPs that receive services from DSPs – provides information specifically for PESPs that operate in partnership with regulated service providers.

Regulated service providers | DSPs

- 1.8.8 Section 6 – Designated Service Providers – provides information for existing regulated service providers that wish to provide AML/CFT services for Schedule 2 businesses after the transitional period (DSPs).
- 1.8.9 Section 3.8.1, and [Appendix A](#) provide information on how to go about determining, and documenting these matters. Section 5 provides information about the registration process for PESPs.
- 1.8.10 Some PESPs which will be required to apply for registration as Schedule 2 businesses during the transitional period will already have certain AML/CFT obligations fulfilled by their regulated service providers. These obligations may currently be fulfilled by their regulated service providers in order to fulfil their regulated service providers' own AML/CFT obligations, or compliance with these obligations may be supported by their regulated service provider as in the case of certain trustees and General Partners utilising some of the Professional Investor Regulated Scheme exemptions.
- 1.8.11 If such PESPs agree with their existing regulated service provider, and their regulated service provider secures registration to provide the services of a Designated Service Provider (**DSP**), these PESPs will be able to engage the services of their DSP to undertake the registration process on their behalf, and to fulfil their AML/CFT obligations on an ongoing basis. Section 5.3 provides information about the registration process for new Schedule 2 businesses that receive services from a DSP. Section 6 provides more detailed information for and about DSPs.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The JFSC is issuing this consultation in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998 under which the JFSC may “consult and seek the advice of such persons or bodies” as it considers appropriate.

2.2 Responding to the consultation

- 2.2.1 We invite comments in writing from interested parties on the proposals included in this consultation paper. 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.
- 2.2.2 JFL are coordinating an Industry response that will incorporate any matters raised by local businesses which will be shared with us on an aggregated and anonymised basis.
- 2.2.3 Comments should be received no later than **14 October 2022**.

2.3 Next steps

- 2.3.1 Feedback will be published in November 2022 we are available during the consultation period should you wish to discuss any matters in this consultation paper with us.
- 2.3.2 As highlighted at section 1.3 (Consultation and implementation timeline), subject to feedback on the proposals in this consultation paper, it is intended to request Government proceed to lodge (anticipated late October 2022) the Amending Regulations for scrutiny then States debate (anticipated December 2022).
- 2.3.3 Subject to the progress of the Amending Regulations through the States Assembly, it is anticipated that the Minister for Treasury and Financial Services (**Minister**) may decide to introduce the Amending Order and bring into force the Amending Law and Amending Regulations through the Commencement Order in January 2023.
- 2.3.4 In parallel, we intend to continue engagement with Industry to discuss the finalisation of the JFSC's guidelines and guidance that will be necessary to support Industry's understanding, and as appropriate, adoption of the amended legislative and regulatory regime over the remaining months of 2023.

3 Proposals

3.1 Legislative Amendments – 3.2 to 3.6

- 3.1.1 Article 1(3) of the Amending Law introduces Article 44A to the POCL which provides that the States Assembly may, by Regulations – (a) make any consequential and transitional provisions; (b) make amendments to this Law or any other enactment, that appear necessary or expedient in connection with the coming into force of the Amending Law.
- 3.1.2 The key features of the Amending Regulations are explained in Sections 3.2 to 3.6.
- 3.1.3 Law drafting for the Amending Regulations is in progress as outlined in the diagram at 1.3.1 and will be completed shortly after this consultation ends in October 2022, taking account of feedback received.
- 3.1.4 It is proposed that the transitional provisions will provide for a period of six months during which PESPs will be required to make an application for registration with the JFSC. Existing Schedule 2 businesses that are conducting more than one type of activity under the recast Schedule 2 will not need to apply during this period, but the JFSC will collect data on an ongoing basis to confirm each of the activities or operations within Schedule 2 that such existing Schedule 2 businesses undertake.

- 3.1.5 Article 2 provides that the Amending Law will come into force on a day specified by Ministerial Order, this is the Commencement Order. It is intended that the Amending Law, Amending Regulations, Amending Order will all come into effect on the same day at the start of January 2023. This is the date on which the six-month transitional period will commence.

3.2 Legislative amendments – POCL

- 3.2.1 The clause “when conducted as a business” in Article 36 is intended to be subject to the existing provision allowing for statutory guidelines on interpretation to be issued by the JFSC in order that more clarity can be provided to individuals and organisations on their inclusion, or exclusion, as a supervised person.
- 3.2.2 The definition of “financial services business” in Article 36 is also intended to include DSPs appointed to perform DSP services for PESP that enable PESP to fulfil their AML/CFT obligations under the MLO and SBJL.
- 3.2.3 It will be clear that the appointment of a DSP to undertake such activities for PESP does not relieve the PESP of its responsibility to achieve compliance with its own AML/CFT obligations.
- 3.2.4 It is intended to clarify that the Article 37(10) defence of “reasonable steps and due diligence” contemplates the position of a PESP where a DSP is appointed. In such circumstances, the reasonableness of the appointment, its terms and conditions, and the oversight exercised would need to be considered.
- 3.2.5 The Amending Order (see 3.4) is intended to provide for certain AML/CFT obligations on Schedule 2 businesses to be fulfilled by DSPs.
- 3.2.6 Through Article 36 and Schedule 2, Part 5, paragraph 25 in the Amending Law the current application to non-professional trustees is intended to be reinstated before the Amending Law comes into force.

3.2.7 Question 1

Do you agree with the proposed amendments to the POCL?

3.3 Legislative amendments – SBJL

- 3.3.1 In respect of Article 23 to 26, 30 and 31, it is intended to clarify that these apply to a DSP appointed by a PESP. The SBJL is specific as to whom can be subject to the particular provisions of the Supervisory Bodies Law. The PESP (i.e. the entity whose business is being carried on) will naturally fall into scope. It is intended to be clear that the DSP they engage will concurrently be in scope in relation to the DSP services that it provides.

3.3.2 Question 2

Do you agree with the proposed amendments to the SBJL?

3.4 Legislative amendments – MLO

- 3.4.1 The obligations around appointments of Money Laundering Compliance Officers (MLCO), and Money Laundering Reporting Officers (MLRO) are intended to be amended for Schedule 2 businesses engaging the services of a DSP such that:
- 3.4.1.1 A PESP can appoint a DSP to carry out the activity of appointing an MLCO and MLRO to the PESP yet retains responsibility for these

- appointments, as for all activities performed by DSPs in fulfilling the activities required of their DSP Direct Customers.
- 3.4.1.2 The DSP must appoint an employee of the DSP to carry out those roles.
 - 3.4.1.3 The DSP must make the appointment from a list of qualified persons to whom the JFSC has provided its “no objection” to such appointment.
 - 3.4.1.4 The DSP must also notify the JFSC of the removal of anyone from these two lists.
 - 3.4.1.5 The DSP need not supply the JFSC with updates on individual appointments into the roles for particular PESPs, but must supply up to date information to the JFSC on request.
 - 3.4.1.6 The power to make appointments of MLCOs and MLROs will only apply if the PESP has contracted with the DSP for the purpose of meeting other listed obligations.
 - 3.4.1.7 The power to designate alternates to the MLRO will be available to the DSP for its PESP clients.
 - 3.4.1.8 The AML/CFT Handbook provisions (see [Appendix B](#)) provide detail regarding administrative arrangements for the PESP as DSP Direct Customer, which would include matters such as the PESP at its initial board meeting (or equivalent) appointing the DSP to administer the appointment of MLCO and MLRO, and matters such as the receipt of ongoing reporting from the DSP to the PESP’s board (or equivalent)

3.4.2 Question 3

Do you agree with the proposed amendments to the MLO?

3.5 Legislative amendments – Financial Services (Jersey) Law 1998 (FSJL)

- 3.5.1 The AML/CFT Handbook and the JFSC’s Outsourcing Policy already describe a mechanism for outsourcing agreements to be entered into between Schedule 2 businesses and outsourcing service providers for the fulfilment of certain activities that Schedule 2 businesses must perform in order to meet their AML/CFT obligations (existing outsourcing mechanism).
- 3.5.2 The existing outsourcing mechanism is not modified by the proposals in this consultation and it remains available for existing Schedule 2 businesses, as well as PESPs that wish to utilise the existing outsourcing mechanism for the fulfilment of certain of their AML/CFT obligations when they become Schedule 2 businesses.
- 3.5.3 However, the proposal to introduce the DSP class of business is designed to provide a way for additional activities to those provided for under the existing outsourcing mechanism to be outsourced by Schedule 2 businesses. It is expected that DSPs will perform all of the activities detailed within the proposed Codes of Practice (see [Appendix B](#)) for their Schedule 2 business customers by way of a formal agreement.
- 3.5.4 The legislative proposals in respect of the FSJL will create the DSP class of business enabling the provision of these additional services to a DSP’s Schedule 2 business customers (its DSP Direct Customers).
- 3.5.5 The business of a being a DSP will be a new FSJL class of business. The role of a DSP is proposed as “to be engaged by a Schedule 2 business to carry out certain services”, namely:

- 3.5.5.1 Appointing a MLCO and MLRO in respect of a DSP Direct Customer.
- 3.5.5.2 Other services required under the MLO, and AML/CFT Handbook outsourced by the PESP to the DSP under a contract for services by the PESP.
- 3.5.6 During the transitional period it is intended that the DSP class of business will only be available to existing regulated service providers that already provide services to PESPs. For these existing regulated service providers, the registration process will be straightforward, with further detail on the practical steps involved being at Section 6.2.
- 3.5.7 The reason that we do not intend to make the DSP class of business available to businesses that are not already providing services to PESPs, at least during the transitional period, is that during the transitional period it is expected that there will be a significant volume of activity as existing businesses that are DSPs (and their PESP customers) set about registering with the JFSC. The more urgent need, than for new businesses, is to ensure stability for existing businesses.
- 3.5.8 Where DSPs take on new Schedule 2 business customers during the transitional period that would be PESPs, but for the impact of the changes proposed in this consultation, the process for application and registration in respect of these Schedule 2 businesses will be available as for PESPs.

3.5.9 Question 4

Do you agree with the proposed amendments to the FSJL?

3.6 Legislative amendments – purely consequential

- 3.6.1 There will be several purely consequential amendments to other laws that currently cross-refer to the amended laws above.

3.7 Guidelines on interpretation

- 3.7.1 The draft guidelines on interpretation are found at [Appendix A](#).
- 3.7.2 The guidelines are intended to support Industry in understanding and complying with the revised scope of application of Jersey's AML/CFT regime.
- 3.7.3 Some individuals and organisations may not be clear on whether they are within the scope of the recast Schedule 2 and consequently their AML/CFT obligations should they be a PESP. We hope to enhance clarity through this consultation.
- 3.7.4 Section 1 – Overview – provides an introduction to the Guidelines on interpretation and is intended to explain how to go about determining if an individual or organisation's activities or operations fall within the definitions in Schedule 2, as well as whether they are subject to registration requirements.

3.7.5 Question 5

Do you have any comments on Section 1 – Overview – of the proposed Guidelines on interpretation?

- 3.7.6 Section 2 – Conducted as a business – provides detail on the high-level filtering of activities or operations, even where they are within the definitions found in Schedule 2, that may mean an activity or operation is excluded from AML/CFT obligations as it falls outside of the intended scope of capture of Schedule 2.

3.7.7 Question 6

Do you have any comments on Section 2 – Conducted as a business – of the proposed Guidelines on interpretation?

- 3.7.8 Section 3 - Guidelines on the interpretation of any provision in Schedule 2 – provides further detail on each definition within Schedule 2 and is intended to provide Industry with additional support in performing their analysis regarding whether or not they are included in, or excluded from, the definitions in Schedule 2.

3.7.9 Question 7

Do you have any comments on Section 3 – Guidelines on the interpretation of any provision in Schedule 2 – of the proposed Guidelines on interpretation?

- 3.7.10 Within Section 3 the definitions for “funds” and “securities” are deliberately broad in line with the approach taken within the FATF Standards. Our approach is intended to capture all activities and operations that would meet the FI definitions relevant to funds and securities activities. However, we note the potential for the unintended capture of, for example, Jersey incorporated private companies outside of the financial services sector issuing their own shares to members are not intended to be captured.

3.7.11 Question 8

Do you consider that the guidelines regarding the definitions of “funds” and “securities” achieve the effect described at 3.7.10?

- 3.7.12 As described at 3.2.1, the Amending Law does not currently provide for the JFSC to issue guidelines on the interpretation of any provision beyond those within Schedule 2. Our proposal is for the Amending Regulations to specifically provide for the JFSC to be able to issue guidelines on the interpretation of the term “conducted as a business” within Article 36 of the POCL such that the JFSC’s guidelines on interpretation ([Appendix A](#)) are able to support Industry in analysing its activities effectively, including whether or not they are conducted as a business.
- 3.7.13 However, the proposed guidelines on the interpretation of “conducted as a business” at the high-level may not feature in the guidelines that are formally issued as the JFSC’s guidelines may be restricted to provisions within Schedule 2, i.e. the powers in the Amending Law as it is now. We consider that the inclusion of the proposed guidelines (assuming the power to issue them) is helpful, and we will endeavour to include guidelines having the same effect, albeit they may be at the level of each provision.
- 3.7.14 “Conducted as a business” is the term used in the FATF Standards, so is deliberately used in the Amending Law rather than “by way of business” which is the term used in certain of the conduct of business and prudential regulatory laws. As was highlighted by members of the working group, and respondents to the 2021 Consultation, the JFSC’s [2009 guidance note on natural persons undertaking the activity of acting as a director under the FSJL](#) (2009 Guidance Note) provides guidance on the concept of “by way of business” including indicators of what may or may not constitute the performance of an activity or operation “by way of business”.
- 3.7.15 The 2009 Guidance Note is not cross-referred to by the draft Guidelines on Interpretation in order to maintain the separation of the AML/CFT from the conduct of business and prudential regulatory regime. However, we note the 2009 Guidance

Note may be of use in responding to this consultation when considering our approach to whether an activity or operation is “conducted as a business”, particularly for activities or operations that meet the definition of FIs, VASPs, and Trust and Company Service Providers (TCSP), but who are uncertain about whether or not they are conducting activity as a business.

3.7.16 Question 9

Do you have any further comments on the draft guidelines on interpretation at [Appendix A](#)?

3.8 Codes of Practice and Guidance for DSPs and their PESPs

- 3.8.1 The draft Codes of Practice and Guidance for DSPs and their PESPs are found at [Appendix B](#).
- 3.8.2 During the transitional period, regulated service providers who currently provide services to PESPs are likely to support these PESPs in fulfilling their AML/CFT obligations. Feedback is sought using the template found at Section 7 on the Codes of Practice and guidance that will support DSPs and PESPs in complying with the revised AML/CFT regime.
- 3.8.3 In particular, feedback is sought using the template found at Section 7 regarding whether the JFSC’s proposed Codes of Practice and guidance provide sufficient clarity to enable PESPs to assume their AML/CFT obligations, and for DSPs to perform the activities that will support PESPs in fulfilling their AML/CFT obligations.

3.8.4 Question 10

Do you consider that the draft Codes of Practice and Guidance provide sufficient clarity to enable PESPs to assume their AML/CFT obligations, and for DSPs to perform the activities that will support PESPs in fulfilling their AML/CFT obligations?

- 3.8.5 On an ongoing basis, it is anticipated that Schedule 2 businesses that are not PESPs will receive services from DSPs. It is intended that these Schedule 2 businesses will be supported by the Draft Codes of Practice and guidance found at [Appendix B](#). The focus during the transitional period will be on supporting PESPs and their DSPs in adjusting to the revised AML/CFT regulatory regime. However, the intent of the proposed Codes of Practice and guidance is that they will function on an ongoing basis for these Schedule 2 businesses, and their DSPs.

3.8.6 Question 11

Do you consider that the draft Codes of Practice and Guidance provide sufficient clarity to enable Schedule 2 businesses to assume their AML/CFT obligations, and for DSPs to perform the activities that will support Schedule 2 businesses in fulfilling their AML/CFT obligations?

- 3.8.7 Regulated service providers that currently provide similar services, such as Trust Company Businesses and Fund Service Businesses that undertake Designated Service Provider activities for Jersey Private Funds, or Fund Services Businesses holding the ZK class of business (Manager of a Managed Entity) these Codes of Practice and the related guidance are intended to crystallise the obligations and expectations as the Amending Law, Amending Regulations, and Amending Order come into force by way of the Commencement Order.
- 3.8.8 The table at 18.2 within [Appendix B](#) is intended to illustrate the AML/CFT obligations on Schedule 2 businesses that may be outsourced to DSPs drawing from the general sections of the AML/CFT Handbook (Sections 1-10).

3.8.9 Question 12

Do you consider that the table at 18.2 within [Appendix B](#) includes all of the relevant obligations?

3.8.1 Question 13

Do you have any other comments on the draft Codes of Practice and Guidance for Schedule 2 businesses and DSPs at [Appendix B](#)?

3.8.2 Question 14

Do you have any other comments in relation to the proposals in this consultation?

4 Determining and documenting if you are affected

4.1 Purpose of this section

- 4.1.1 This section first outlines the approach that may be taken to determine whether your activities and operations are subject to registration obligations with the JFSC as a Schedule 2 business.
- 4.1.2 This section then describes how you may document your conclusion regarding whether you are within the scope of application of Schedule 2 for the purposes of good governance and record keeping.

4.2 Exclusion from scope

- 4.2.1 If you conduct business in or from within Jersey (save for Non-Professional Trustees as at 4.2.3), and are able to determine and demonstrate that the activities or operations that you undertake:
 - 4.2.1.1 Are within the definitions of FI, DNFBP, or VASP found in the recast Schedule 2 **BUT** are not conducted as a business; OR
 - 4.2.1.2 Are not within the definitions of FI, DNFBP, or VASP found in Schedule 2,then you will not be affected by these proposals.
- 4.2.2 If you are not able to meet the criteria at 4.2.1, specifically the activities or operations that you undertake in or from within Jersey:
 - 4.2.2.1 Either:
 - › are conducted as a business (save for Non-Professional Trustees as at 4.2.3); and
 - › are within the definitions found in the recast Schedule 2,then you are a PESP and will be required to apply for registration with the JFSC as a Schedule 2 business before the end of the six-month transitional period. We anticipate this to be on or before 30 June 2023.
- 4.2.3 However, if you are a trustee of an express trust acting otherwise than by way of business, then you will continue to be required to comply with your existing obligations in accordance with the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016. For the avoidance of doubt, Non-professional trustees will continue to be exempt from the requirement to register with the JFSC.

- 4.2.4 [Appendix A](#) provides the draft guidelines on interpretation to support your analysis under 4.2.1 and 4.2.2.
- 4.2.5 If your analysis leads you to conclude that your activities and operations fall under 4.2.2, then you are a PESP and will be required to register with the JFSC during the transitional period and will be a Schedule 2 business once registered. Section 5 provides information about this registration process.
- 4.2.6 Some PESPs which will be required to apply for registration as Schedule 2 businesses during the transitional period will already have certain AML/CFT obligations. These obligations may currently be fulfilled by their regulated service providers in order to fulfil their regulated service providers' own AML/CFT obligations, or compliance with these obligations may be supported by their regulated service provider as is the case for certain trustees and General Partners utilising some of the Professional Investor Regulated Scheme exemptions.
- 4.2.7 If such PESPs agree with their existing regulated service provider, and their regulated service provider secures registration to provide the services of a DSP, these PESPs will be able to engage the services of their DSP to undertake the registration process on their behalf, and to fulfil certain of their AML/CFT obligations on an ongoing basis.
- 4.2.8 Section 5.3 provides information about the registration process for Schedule 2 businesses that receive services from a DSP and want to utilise the DSP in their application process. Section 6 provides more detailed information for, and about, DSPs.

4.3 Documenting your conclusion

- 4.3.1 If you have determined that you are a PESP you will be required to apply for registration with the JFSC and should refer to Section 5.
- 4.3.2 If you have determined that you are not a PESP, documenting your conclusion would demonstrate good governance and enable you to refer back to your conclusion at relevant future dates should any queries regarding your regulatory status arise. For example if you undertake a change in activities or operations that may prompt you to reconsider your status with respect to Schedule 2, you would be able to recreate the process that you used to determine your current status and draw a conclusion in light of your changed circumstances.
- 4.3.3 Having a clearly documented conclusion would be particularly beneficial if you conclude that you do undertake activities and operations that are within the definitions found in the recast Schedule 2, but that you do not conduct these activities or operations as a business.
- 4.3.4 A good example of a clearly documented conclusion would feature a document that:
 - 4.3.4.1 Identifies whether you undertake any of the activities and operations specified within Schedule 2;
 - 4.3.4.2 In the case of any activities or operations specified in Schedule 2 that are identified as being undertaken, identifies whether any of these activities or operations are conducted as a business; and
 - 4.3.4.3 Is considered and approved by the Board of Directors (if a company) or equivalent (if another form of business).

5 Registration process for PESPs

5.1 Purpose of section

- 5.1.1 This section explains how, on a practical basis, PESPs should go about the process of applying for registration with the JFSC.

5.2 PESPs that do not receive services from DSPs

- 5.2.1 Businesses that conclude, in line with Section 3.8.2, that they are PESPs will need to complete an application to register as a Schedule 2 business. We are currently developing new application forms for Schedule 2 businesses to reflect the recast Schedule 2 under the Amending Law.
- 5.2.2 The new application forms will be available from the start of the transitional period (anticipated January 2023) at the following page on our website [Accountants, estate agents, lawyers and other businesses forms — Jersey Financial Services Commission](#).
- 5.2.3 In support of their application PESPs will be required to provide a draft copy of their Business Risk Assessment (BRA) evidencing that they have considered the AML/CFT risks to which they may be exposed, and how these will be addressed.
- 5.2.4 The PESP will also need to confirm that they have drafted AML/CFT policies and procedures, to ensure compliance with applicable statutory and regulatory obligations.
- 5.2.5 The deadline for the application for registration as a PESP will be at the end of the transitional period (anticipated 30 June 2023), however, earlier application is encouraged. The JFSC will endeavour to provide confirmation of its decision regarding registration for PESPs within six weeks of application, however, due to the volume of applications anticipated cannot commit to this timeframe.
- 5.2.6 Until the JFSC has determined its application, the PESP may continue to operate as if it were registered as a Schedule 2 business.

5.3 PESPs that receive services from DSPs

- 5.3.1 Where a PESP agrees with their existing regulated service provider, and their regulated service provider has secured registration to provide services as a DSP, the PESP will be able to engage their DSP to undertake the registration process on their behalf, and to assist in fulfilling their AML/CFT obligations on an ongoing basis (see also section 6.3).
- 5.3.2 During the transitional period, registered DSPs will be provided with a spreadsheet that will enable them to provide the details of all PESPs to which they provide services in order to register their PESP customers as Schedule 2 businesses.
- 5.3.3 The details required within the spreadsheet will be consistent with the application form at 5.2.2, however, DSPs will not be required to provide:
- 5.3.3.1 The name of the PESP's MLCO;
 - 5.3.3.2 The name of the PESP's MLRO; and
 - 5.3.3.3 A copy of the PESP's BRA.
- 5.3.4 The reason that the DSP will not be required to provide this information for each individual PESP is that DSPs will undertake equivalent confirmations on registration as a DSP (see Section 6.2).

6 Designated Service Providers

6.1 Overview

- 6.1.1 DSPs are regulated service providers that currently provide services to PESPs and who choose to apply during the transitional period for a DSP class of business under the FSJL (see Section 3.5).
- 6.1.2 [Appendix B](#) contains the proposed Codes of Practice and guidance for DSPs and PESPs. This section summarises:
 - 6.1.2.1 The registration process for DSPs (section 6.2);
 - 6.1.2.2 The registration process for PESPs receiving DSP services (section 6.3);
 - 6.1.2.3 Approaches to documenting arrangements as PESPs transition from being outside of the scope of the AML/CFT obligations, or from being outside of the registration requirements, when in receipt of a DSP's services (section 6.4);
 - 6.1.2.4 The registration process for any person within the scope of the recast Schedule 2 receiving DSP services on an ongoing basis (section 6.5);
 - 6.1.2.5 The key features of the proposals at [Appendix B](#) (section 6.6).

6.2 Registration process for DSPs

- 6.2.1 Regulated service providers that wish to provide services as a DSP will be able to apply for registration from the start of the transitional period (anticipated January 2023). We are currently developing new application forms for DSPs which are subject to the legislative amendments at Section 3.5 being approved by the States Assembly.
- 6.2.2 On the assumption that these legislative amendments do progress, we have commenced the process of planning the application forms for DSPs which will be made available on the JFSC's website.
- 6.2.3 In addition to general information about the applicant, DSP application forms will require the DSP to give the following undertakings:
 - 6.2.3.1 That the applicant has determined that it has the capability and competence to provide DSP services for DSP Direct Customers;
 - 6.2.3.2 That the applicant is, or will be by the date on which they commence DSP services, able to demonstrate compliance with:
 - › the conduct of business and prudential codes of practice for DSPs;
 - › the AML/CFT Codes of practice within the AML/CFT Handbook for DSPs; and
 - › the relevant statutory requirements for DSPs under the FSJL, Supervisory Bodies Law, POCL, and MLO;
 - 6.2.3.3 That the applicant understands that DSP services provided to a PESP enable the PESP to demonstrate compliance with the PESPs AML/CFT obligations; and
 - 6.2.3.4 That the applicant acknowledges, if as a result of the services provided by the DSP to the PESP, the PESP cannot demonstrate compliance, the DSP in relation to its performance of those services may face consequences under the FSJL – this is in addition to consequences the

DSP may face in respect of its own responsibilities under the MLO and AML/CFT Handbook where the PESP is its customer.

- 6.2.4 In order that we are able to process the anticipated volume of DSP applications during the transitional period the DSP class of business will only be available to existing regulated service providers that already provide services to PESPs. For these existing regulated service providers, the registration process will be straightforward, reflecting the fact that the DSP is already regulated under the FSJL, capable of performing the activities of a DSP, and voluntarily doing so.
- 6.2.5 The DSP will be expected to confirm that they have, or by the date on which they commence providing DSP services will have, adequate policies and procedures in place to ensure compliance with the requirements outlined at [Appendix B](#) and summarised at Section 6.5.1.
- 6.2.6 The DSP licence is likely to be granted on the basis that the undertakings of the DSP in respect of its compliance with the requirements at [Appendix B](#) and summarised at Section 6.5.1 are complete and correct. In most cases this will be sufficient. However, where a DSP is subject to heightened supervision or enforcement activity, the JFSC will discuss the DSP's application with the applicant in more detail and is likely to require significantly more information, and time, before determining the application.
- 6.2.7 As for registration as a PESP, the deadline for applying for registration as a DSP will be at the end of the transitional period (anticipated 30 June 2023). However, the JFSC expects DSPs to have made their application no later than 31 March 2023 such that there is sufficient time for all DSPs to be registered in advance of the expected end of the transitional period, being 30 June 2023. The JFSC will endeavour to provide confirmation of its decision regarding registration for DSPs within four weeks of application, however, due to the volume of applications anticipated cannot commit to this timeframe.
- 6.2.8 Until the JFSC has determined its application, the DSP may operate as if it were registered as a DSP.

6.3 Registration process for PESPs receiving DSP services

- 6.3.1 Provided that the DSP has secured registration in line with Section 6.2, the registration process described at Section 5.3 applies.
- 6.3.2 Where a DSP is an applicant for registration as a DSP and submits applications to register PESPs as Schedule 2 businesses, or for Schedule 2 businesses on an ongoing basis, the JFSC will accept such applications, but will not register these businesses until after the DSP's application for registration has been determined.
- 6.3.3 In light of this, any regulated service provider that wishes to provide DSP services to client entities is encouraged to apply for registration as a DSP as early as possible during the transitional period (as at 6.2.7 no later than 31 March 2023).

6.4 Approaches to documenting arrangements as PESPs transition from unregistered Schedule 2 businesses to Schedule 2 businesses in receipt of a DSP's services

- 6.4.1 A critical feature of the DSP regime is that while the fulfilment of AML/CFT obligations will be performed by the DSP on behalf of its Schedule 2 business clients (PESPs in the first instance), the PESP cannot delegate its responsibilities as a Schedule 2 business. This means that the PESP's board of directors (or equivalent

where the PESP is not a company) will need to consider and decide on the appointment of its DSP.

- 6.4.2 This feature of the DSP regime, and the mechanics by which DSPs and PESPs will arrange for the fulfilment of the PESP's AML/CFT obligations are outlined in [Appendix B](#).

6.5 Registration process for Schedule 2 Businesses receiving DSP services on an ongoing basis

- 6.5.1 When a registered DSP takes on a new Schedule 2 business as a new customer, that new Schedule 2 business will be able to engage their DSP to undertake the registration process on their behalf, and to assist in the fulfilment of their AML/CFT obligations on an ongoing basis.
- 6.5.2 Registered DSPs will be able to use the spreadsheet described at 5.3 in order to provide the details of the Schedule 2 business to the JFSC and so register their customer that is also a Schedule 2 businesses.
- 6.5.3 As at 5.3.3, DSPs will not be required to provide:
- 6.5.3.1 The name of the Schedule 2 business's MLCO;
 - 6.5.3.2 The name of the Schedule 2 business's MLRO; and
 - 6.5.3.3 A copy of the Schedule 2 businesses BRA.
- 6.5.4 The reason that the DSP will not be required to provide this information for each individual Schedule 2 businesses is that DSPs will have undertaken equivalent confirmations on registration as a DSP (see Section 6.2).
- 6.5.5 In due course, and we anticipate by 31 December 2023, the administration of the registration and deregistration process for Schedule 2 businesses receiving services from DSPs will take place through the myJFSC portal in line with our plans for our other authorisations processes.

6.6 Key features of the proposals at [Appendix B](#)

- 6.6.1 [Appendix B](#) introduces two new codes of practice within the Code of Practice for Trust Company Business and Code of Practice for Fund Services Business that are complementary to the new class of FSJL business of being a DSP.
- 6.6.2 These new Codes are designed to create a regulatory requirement to ensure that DSPs will comply with the requirements within the Handbook and to make relevant notifications to the JFSC of specific matters.
- 6.6.3 [Appendix B](#) then introduces a new section (Section 18) to the Handbook which provides an overview of DSP Services including the obligations:
- 6.6.3.1 On DSPs; and
 - 6.6.3.2 On DSP Direct Customers.
- 6.6.4 As DSPs (at least until the end of the transitional period) are expected to be well established service providers registered under the FSJL and providing similar services to their existing customers (e.g. unclassified funds), Section 18 does not provide detailed guidance beyond:
- 6.6.4.1 An index to the obligations and activities on DSPs and their DSP Direct Customers;

- 6.6.4.2 Particular areas of consideration for DSPs and their DSP Direct Customers; and
- 6.6.4.3 Codes of practice for both DSPs and DSP Direct Customers (i.e. PESPs) that are intended to support the transition for PESPs from being out of scope of AML/CFT obligations to registered Schedule 2 businesses.

7 Summary of Questions

We would appreciate feedback using the following template:

Page	Question	Yes/No	Commentary
16	Question 1 Do you agree with the proposed amendments to the POCL?		
16	Question 2 Do you agree with the proposed amendments to the SBJL?		
17	Question 3 Do you agree with the proposed amendments to the MLO?		
18	Question 4 Do you agree with the proposed amendments to the FSJL?		
19	Question 5 Do you have any comments on Section 1 – Overview – of the proposed Guidelines on interpretation?		
19	Question 6 Do you have any comments on Section 2 – Conducted as a business – of the proposed Guidelines on interpretation?		
19	Question 7 Do you have any comments on Section 3 – Guidelines on the interpretation of any provision in Schedule 2 – of the proposed Guidelines on interpretation?		
19	Question 8 Do you consider that the guidelines regarding the definitions of “funds” and “securities” achieve the effect described at 3.7.10?		
20	Question 9		

Page	Question	Yes/No	Commentary
	Do you have any further comments on the draft guidelines on interpretation at Appendix A?		
20	Question 10 Do you consider that the draft Codes of Practice and Guidance provide sufficient clarity to enable PESPs to assume their AML/CFT obligations, and for DSPs to perform the activities that will support PESPs in fulfilling their AML/CFT obligations?		
20	Question 11 Do you consider that the draft Codes of Practice and Guidance provide sufficient clarity to enable Schedule 2 businesses to assume their AML/CFT obligations, and for DSPs to perform the activities that will support Schedule 2 businesses in fulfilling their AML/CFT obligations?		
21	Question 12 Do you consider that the table at 18.2 within Appendix B includes all of the relevant obligations?		
21	Question 13 Do you have any other comments on the draft Codes of Practice and Guidance for Schedule 2 businesses and DSPs at Appendix B?		
21	Question 14 Do you have any other comments in relation to the proposals in this consultation?		

Appendix A: Draft guidelines on interpretation under Article 36 of the POCL

[Appendix B: Draft Codes of Practice and Guidance for Designated Service Provide](#)