

Feedback on follow on consultation on AML/CFT scope exemptions

A feedback paper relating to the follow-on consultation to align Jersey's AML/CFT registration regime with the 2012 FATF Recommendations

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Glossary

Amending Law	draft Proceeds of Crime (Amendment No. 6) (Jersey) Law 202-
AML	Anti-Money Laundering
CFT	Countering the Financing of Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FATF Recommendations/FATF Standards	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
JATCO	Jersey Association of Trust Companies
JCOA	Jersey Compliance Officers Association
JFA	Jersey Funds Association
JFSC	Jersey Financial Services Commission
ML	Money Laundering
MLO	Money Laundering (Jersey) Order 2008
POCL	Proceeds of Crime (Jersey) Law 1999
SBJL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Schedule 2	POCL's Second Schedule
Scope exemptions	Exemptions that exclude activity from the scope of activities caught by AML/CFT obligations in Jersey
TCB	Trust Company Business
VASP	Virtual Asset Service Provider
We / us	Government and the JFSC

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1 Executive Summary

1.1 Background

- 1.1.1 On 17 December 2021 Government and the JFSC published a consultation on proposals to amend Jersey's AML/CFT scope exemption regime. A feedback paper was issued in February 2022 (the **Original FP**).
- 1.1.2 Following the feedback received, a follow-on consultation paper (the **CP**) was issued on 14 September 2022. The CP sought feedback on the proposed legislation, regulatory rules, guidelines and guidance designed to support Industry in understanding and complying with the revised scope of application of Jersey's AML/CFT regime.

1.2 Feedback received

- 1.2.1 The consultation period for the CP closed on 14 October 2022. We received **12** responses directly and Jersey Finance Limited received **6** responses. In total we received **18** responses although it is noted that more than one respondent provided their responses both directly to the JFSC and also to an industry body on an anonymised basis.
- 1.2.2 A number of common themes emerged from the responses. Section 2 of this Feedback Paper presents a summary of those common themes and our responses.
- 1.2.3 The emergence of common themes from the responses caused the JFSC to host a series of focus sessions with Industry (including the JFA, JATCO and JCOA) throughout the week commencing 07 November 2022. For completeness, output from those focus sessions has been incorporated into this Feedback Paper.
- 1.2.4 Due to the nature of some aspects of the common themes, independent opinion was sought from Financial Transparency Advisors on the proposed approaches being sought by Industry in light of the FATF Recommendations. In particular, opinion was sought in relation to the treatment of corporate trustees.
- 1.2.5 Section 3 of this Feedback Paper present a summary of other substantive comments received and our responses specific to the questions posed in the CP.
- 1.2.6 We are grateful to respondents for taking the time to consider and comment on our proposals. We are also grateful to those who participated in the focus sessions. A full list of respondents is provided in Appendix A.

1.3 Next steps and Transitional Provisions

Next Steps

- 1.3.1 Government lodged the Amending Regulations in December and the States debate is anticipated to be early 2023.
- 1.3.2 It is anticipated the Amending Law and Amending Regulations will be brought into force through the Commencement Order immediately after the States debate.
- 1.3.3 It should be noted that the [Consultation on proposals regarding further enhancements to the AML/CFT Handbook](#), issued October 2022, does not incorporate the ancillary amendments required in the AML/CFT Handbook to ensure alignment with the recast Schedule 2. These ancillary amendments together with the enhancements to the AML/CFT Handbook will likely result in changes to the Guidelines.

Transitional Provisions

- 1.3.4 Regulated service providers that wish to provide services as a DSP and meet the requirements to do so, will be able to apply to the JFSC for registration from the start of the transitional period (anticipated to commence January 2023). There will also be forms for registration of a PESP/multiple PESPs to be submitted by the AMLSP and a form for individual PESPs without an AMLSO to register themselves. All relevant forms will become available on the JFSC's website shortly following the States debate.
- 1.3.5 To note, these transitional arrangements only apply to businesses that were previously out of scope by way of an exemption and businesses that may not have previously had to apply for registration.

2 Consultation Feedback: Common Themes

2.1 Overview

- 2.1.1 There were a number of common themes that appeared in responses. This section summarises those themes.

2.2 Designated Service Provider

- 2.2.1 There were several comments and queries received throughout the feedback that related to the DSP and in particular:
 - 2.2.1.1 The value of having a DSP
 - 2.2.1.2 The need for a DSP to be a separate class of FSJL business
 - 2.2.1.3 The possibility of simplifying the concept of DSP
 - 2.2.1.4 The potential confusion resulting from 'DSP' already being a known and understood term in a different context within the Funds sector and
 - 2.2.1.5 Clarification on who can be a DSP and whether or not these arrangements might result in 'orphaned' PESPs.

Government and JFSC response:

- 2.2.2 The concept of a DSP was originally borne out of discussions with the Working Group and introduced as a mechanism to support the changes being made under this regime, enabling PESPs to leverage from work already being undertaken via the existing relationships most PESPs have with a regulated services provider. There is, however, no legal requirement for a PESP to appoint a DSP, a PESP may wish to fulfil all AML/CFT obligations directly.
- 2.2.3 The AML/CFT Handbook describes how a PESP may fulfil its AML/CFT obligations either:
 - 2.2.3.1 Itself (as would be the case for 'orphaned' PESPs) or
 - 2.2.3.2 By engaging the services of a DSP and/or
 - 2.2.3.3 Through outsourcing within the same group or to a third party, an outsourcing services provider (noting that the provision of a PESP MLRO and MLCO cannot be outsourced).
- 2.2.4 Having considered the feedback, it has been determined that the DSP will not be a separate class of FSJL business. It will instead be a concept under the SBJL. This better aligns with the aim of separating the prudential and conduct regulatory regime and the AML/CFT regulatory regime. Consequentially an application under the FSJ Law with accompanying fee will not be required. Instead, regulated service providers that wish

to provide services as a DSP and meet the requirements to do so, will be required to make an application to the JFSC including a list of the PESPs they provide services to and details of the MLRO and MLCOs that the DSP will be providing to those PESPs.

- 2.2.5 For the same reasons that it was determined the DSP will not be a separate class of FSJL business, the proposals received from Industry to extend the prudential and conduct Codes of Practice to address the responsibilities of a DSP, has not been taken forward.
- 2.2.6 We acknowledge the concerns raised with using existing terminology to address a new concept which is limited to AML/CFT obligations only. Following further engagement with Industry there was strong support for the DSP name being changed to the 'Anti-Money Laundering Services Provider' (the **AMLSP**). The term AMLSP will be reflected in the revised Laws, Codes of Practice and Guidance Notes as well as the Guidelines, where applicable.
- 2.2.7 An AMLSP will need to be a financial services business which is registered by the JFSC to carry on one or more of the following classes of business in accordance with the Financial Services (Jersey) Law 1998 (the **FSJ Law**) and which is not a managed entity, managed trust company or a natural person:
- › Trust Company Business – Classes G, H, L, OA and OB
 - › Fund Services Business – Classes U, V, ZG, ZH, ZI and ZJ

This criterion will be set out in a Notice that will be issued under the new Article 9(4) of the Money Laundering (Jersey) Order 2008, as amended (the **Notice**).

- 2.2.8 The JFSC would ordinarily expect that an AMLSP provides more than the minimum services of MLRO and MLCO to a PESP. The AMLSP should be able to demonstrate that it is providing services such that it has sufficient oversight and access to relevant information to appropriately manage the risks of providing the AMLSP services and to enable the MLCO and the MLRO, provided to the PESP by the AMLSP, to fulfil their roles for the PESP.
- 2.2.9 Those eligible to appoint an AMLSP must meet the following criteria, as will be set out in the Notice (the following italicised definitions being definitions in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the **SBL**) is a person who:
- › Is not a *regulated person* carrying on a *regulated business*
 - › has no established place of business in Jersey other than a place of business provided by a person who is registered under the FSJ Law to carry on trust company business or fund services business; and
 - › is required to register under the SBL.

2.3 MLRO/MLCO

- 2.3.1 There were a significant number of comments and queries throughout the feedback in respect of MLROs and MLCOs being provided by the AMLSP to each individual PESP (**PESP Key Persons**). In particular comments were received in relation to:
- 2.3.1.1 Compliance resourcing generally and more specifically to compliance resourcing following the consultation on senior management functions
- 2.3.1.2 Whether guidance would be provided on the number of Key Person roles any one person could be expected to hold
- 2.3.1.3 The rationale for restricting the pool of individuals who can fulfil the roles of PESP Key Persons to only those who have received a no objection under the PQ process (are PQ'd) rather than maintaining the current approach

applied to Schedule 2 applications. One respondent helpfully suggested that it would be beneficial to appoint as the PESP Key Persons, individuals who are part of their existing compliance team who are not PQ'd

- 2.3.1.4 The level of vetting and oversight of PESP Key Persons by the JFSC prior to any appointment to a PESP
- 2.3.1.5 One respondent queried whether in situations where a PESP does not wish to appoint an AMLSP, the requirement for PESP Key Persons to be fulfilled by individuals based in Jersey could be relaxed and
- 2.3.1.6 The need for PESPs to ensure they are fully aware of who their Key Persons are and for those persons to have accepted the role to act as Key Person to any given PESP.

Government and JFSC response:

- 2.3.2 We acknowledge the concerns with respect to resourcing constraints and have been working closely with Industry to identify practical solutions to assist with limiting the impact these changes will have on the finite compliance resource pool available.
- 2.3.3 Following the feedback received and significant engagement with Industry, it has been determined not to limit the requirement for all PESP Key Persons to be PQ'd in the first instance thus widening the pool of individuals who may be able to fulfil these roles.
- 2.3.4 As part of the AMLSP notification, a list of named MLCO and MLROs will need to be provided to the JFSC. That list may comprise key persons who are PQ'd or appointed to existing schedule 2 businesses who are already vetted and are known to the JFSC. The list may also include individuals not already known to the JFSC or individuals who have previously held but do not currently hold key person roles. These individuals will be vetted by the JFSC and when the AMLSP receives its 'no objection' to acting as an AMLSP, this 'no objection' will encompass the list of MLRO and MLCOs.
- 2.3.5 We are mindful that concerns were raised by two respondents in adopting this approach. These concerns related to whether the widened pool would have sufficient skills and experience. However, many respondents were supportive of this new approach, noting that it aligned to current practice, where existing MLRO and MLCOs were supported by a compliance team particularly within the Funds Industry.
- 2.3.6 Any individuals put forward by an AMLSP to hold Key Person roles for a PESP will be vetted by the JFSC. The JFSC will consider if each individual is fit and proper in accordance with Article 14(4) of the Supervisory Bodies Law and may verify the information provided about each individual. It is the responsibility of those individuals together with the AMLSP itself and the governing body of the PESP to ensure any proposed Key Person has sufficient skills and experience, to fulfil the Key Person role of the specific PESP to which they will be appointed, and this has been emphasised in the updated AMLSP section of the AML/CFT handbook.
- 2.3.7 It is also the responsibility of the AMLSP Services Provider and the PESP Key Persons themselves to ensure they have sufficient capacity to fulfil their AML/CFT obligations to the PESPS they are appointed to, again this has been emphasised in the updated AMLSP section of the AML/CFT handbook.
- 2.3.8 All PESP Key Persons are reminded that civil penalties extend to MLRO's in accordance with the senior managers regime.
- 2.3.9 Guidance will not be provided on the maximum number of Key Person roles any one individual should hold. This is because there are too many variables that would need

to be taken into consideration, not least the complexity/risk factors of the entities to which an individual is or will be appointed to. Noting that the same person can be appointed as MLRO and MLCO of the PESP.

- 2.3.10 The Codes of Practice and Guidance have been amended to describe and expand upon the ways in which AMLSPs and the PESP Key Persons can assist the PESPs in achieving adherence to the AML/CFT obligations in a streamlined manner.
- 2.3.11 The amended Codes of Practice and Guidance have also been updated to include the expectations of the JFSC with respect to the governance arrangements of the PESP and AMLSP in managing the appointments of each of the PESP Key Persons individual appointments to each PESP.
- 2.3.12 An amended notice under Article 10 of the Money Laundering will be issued so there is no ongoing requirement for the JFSC to be informed of changes to a PESP Key Person appointed to each individual PESP. This is on the basis that the AMLSP maintains a list of which individuals are appointed as Key Person to which PESP, from the list previously notified to the JFSC by the AMLSP, which will need to be kept up to date.
- 2.3.13 There is no current intention to amend the Money Laundering Order to remove the requirements for Key Persons to be based in Jersey.

2.4 Exemptions

- 2.4.1 There were a number of comments and queries throughout the feedback received that related to the possibility of partial or full exemptions:
 - 2.4.1.1 Several respondents requested further consideration be given the granting of partial exemptions noting these were specifically envisaged in the FATF Recommendations where financial activities are carried out on an occasional or limited basis
 - 2.4.1.2 A number of respondents suggested the activities of structures that are simple in design such as SPV/JV entities involving single issuance of securities or similar and SPV GPs and Trusts are 'limited' and/or 'occasional' in nature thus meet FATFs criteria for exemptions
 - 2.4.1.3 A small number of respondents suggested Very Private structures should be exempt on the basis they are not all funds in the true sense of a fund and "if launched today, they would not constitute a JPF"
 - 2.4.1.4 One responded questioned if it would be possible to demonstrate that whilst certain activities, those of a PTC for example, are not considered low risk and so do not warrant full exemption, a partial exemption could be granted where the risk is mitigated sufficiently by the involvement of a TCB.

Government and JFSC response:

- 2.4.2 Exemptions, whether full or partial, can only be granted where the criteria as set out in the FATF Standards are met:
 - 2.4.2.1 "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
 - 2.4.2.2 "a financial activity (other than the transferring of money or value) is carried out by 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."

- 2.4.3 Whilst the above requests are acknowledged, there is currently no quantitative evidence to demonstrate that the activities being undertaken are, in the first instance, low risk. Consideration in this respect must be given to the FATF published risk indicator criterion.
- 2.4.4 Significant involvement of a TCB and avoiding duplication of AML/CFT obligations has already been determined in the previous assessment of Jersey by Moneyval to be insufficient an argument for granting an exemption for PESPs from being directly subject to AML/CFT obligations.

3 Consultation Feedback: Question Specific

3.1 Overview

- 3.1.1 This section summarises those substantive comments received in response to the CP that do not fall within the common themes (see Section 2 above) and provides our responses to those comments. Please note that not every comment received is individually listed and where comments made related to an answer to one or more questions or were felt to be more appropriately dealt with in another response, they have been consolidated accordingly.

3.2 Question 1 – paragraph 3.2.7 of the CP

Do you agree with the proposed amendments to the POCL?

- 3.2.1 Our thanks goes to those respondents who informed us of a drafting point that erroneously resulted in linking the ‘as a business’ element in Article 36 to Part 5 of the POCL which relates to non-professional trustees of express trusts. This will be amended by the Amending Regulations before the Amending Law comes into force.
- 3.2.2 The majority of respondents confirmed they were in agreement with the proposed amendments to the POCL with comments being raised in relation to:
 - 3.2.2.1 Clarification on accountability and liability of each of the AMLSP and the PESP for any AML/CFT failing
 - 3.2.2.2 The legal status of the Guidelines
 - 3.2.2.3 The use of an AMLSP by a PESP amounted to outsourcing imposing additional administrative burdens such as an outsourcing notification on top of notifying of the AMLSP/PESP relationship and
 - 3.2.2.4 Whether a cost/benefit analysis had been undertaken and could be shared.
- 3.2.3 Two respondents raised concerns that the proposed amendments to the POCL extend the reach of the POCL to activities are not aligned with the FATF Recommendations. One respondent disagreed in particular with bringing connected parties into scope and another with the inclusion of ‘legal arrangements’ within the definition of a legal person. Other issues raised were that a natural person can be a general partner of a trustee and the drafting assumed they were corporate entities.

Government and JFSC response:

- 3.2.4 Taking the feedback received into account, additional wording has been included in the Codes of Practice and Guidance for Schedule 2 businesses and AMLSPs to clarify the position on accountability and liability under the legislation.
- 3.2.5 Section 18 of the AML/CFT Handbook has been amended to take into consideration comments received in respect of outsourcing. For clarification purposes, the appointment of an AMLSP will not be subject to the JFSC’s policy on Outsourcing.

- 3.2.6 The statutory basis of the Guidelines is discussed at Section 1 of the AML/CFT Handbook.
- 3.2.7 As highlighted in our Original FP, we have not undertaken a granular cost/benefit analysis of the proposals as the key benefit is alignment of Jersey's AML/CFT regime to the FATF standards in line with Government's international commitments while the potential cost is an impact on the Island's GDP measured in whole percentage points.
- 3.2.8 The overarching aim of the proposals is to align Jersey's AML/CFT regime to the FATF Standards which are clear that where an activity is captured by the definitions of FI, DBFBP or VASP, the activity must be subject to risk-based AML/CFT oversight.
- 3.2.9 We have legal arrangements that, via their legal persons governing body, undertake recast schedule 2 activities. As such, it is appropriate to retain reference to 'legal arrangements' within the Guidelines, in the AML/CFT Handbook Codes and Guidance. Amendments have been made to address the definition of legal person, while ensuring activity by a legal person in relation to a legal arrangement remains in scope.
- 3.2.10 As was outlined in the Original FP, we acknowledge the arguments put forward regarding connected parties. However no sufficient case, using quantitative evidence, can be made at this time to justify an exemption with the FATF's criteria for exemptions.

3.3 Question 2 – paragraph 3.3.2 of the CP

Do you agree with the proposed amendments to the SBJL?

- 3.3.1 The majority of respondents supported the proposed amendments to the SBJL. Comments/queries were provided, many of which have been addressed at Section 2 above. More general comments related, primarily, to registration logistics and requests for clarification as to who would be required to register.
- 3.3.2 One respondent questioned whether Articles 27-29 of the SBJL would also be extended to apply to an AMLSP appointed by a PESP.

Government and JFSC response:

- 3.3.3 All businesses undertaking a Schedule 2 business will be subject to AML/CFT obligations and therefore required to register with the JFSC for supervision for compliance with those obligations.
- 3.3.4 A financial services business who wishes to be an AMLSP must meet certain eligibility requirements. Those requirements will be set out in a Notice issued under the Money Laundering Order.
- 3.3.5 An AMLSP can complete a PESP's registration on its behalf. Where an AMLSP is acting on behalf of multiple PESPs, it may complete the registration of those PESPs in bulk.
- 3.3.6 An AMLSP appointed by a PESP will be a 'supervised person' for all of the purposes of Part 5 of the SBJL and as such, Articles 27-29 will apply.

3.4 Question 3 – paragraph 3.4.2 of the CP

Do you agree with the proposed amendments to the MLO?

- 3.4.1 The responses were almost equally split between support and rejection of the proposed amendments to the MLO. General comments were raised in relation to:
 - 3.4.1.1 The impact proposals would have on TCB and FSBs in having to re-negotiate contracts with clients

- 3.4.1.2 The financial impacts, including increased fees to clients, resulting from additional services being provided and
- 3.4.1.3 The proposals impacting the attractiveness of Jersey as a domicile of choice and the resulting competitiveness with other financial centres.

Government and JFSC response:

- 3.4.2 We recognise the potential costs to Industry when amending Codes and guidance and have considered this carefully. The amendments made will, in aggregate, ensure that AML/CFT obligations for Jersey businesses are consistent with FATF Standards.

3.5 Question 4 – paragraph 3.5.9 of the CP

Do you agree with the proposed amendments to the FSJL?

- 3.5.1 Following the decision that an AMLSP will not be a separate class of FSJL business, the proposed amendments to the FSJL will not be taken forward. Additional comments provided to this question are dealt with elsewhere in this FP.

3.6 Question 5 – paragraph 3.7.5 of the CP

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

- 3.6.1 The majority of respondents provided comments to this question. In the main, the comments related to the interpretation of ‘as a business’ and will therefore be addressed in our responses to question 6.
- 3.6.2 More general comments related to:
 - 3.6.2.1 The need for the Guidelines to be more detailed, specifically in relation to the Banking Industry was a request from one respondent
 - 3.6.2.2 Concerns that not all businesses are fully aware of the changes
 - 3.6.2.3 The appropriateness of including the statement “Those considering whether their activities and operations fall within this broad range of specified activities and operations should adopt an approach that prefers inclusion over exclusion” and
 - 3.6.2.4 Requests for the Guidelines to clarify that loans between the trust and company or intercompany loans, common practice for trust company businesses, remain/should be exempt along with family loans.

Government and JFSC response:

- 3.6.3 We acknowledge the request for more detailed guidelines specific to the Banking Industry however, we do not propose to issue sector specific guidance. Work has however been undertaken on the Guidelines to include more general examples, diagrams and flowcharts to assist businesses.
- 3.6.4 Extensive outreach and engagement with industry has taken place since 2020 on the removal of the exemptions and the implications for Industry. An engagement timeline has been included at Appendix B for awareness. We acknowledge there may be some unregulated businesses that will be affected by our proposals who were not aware of the consultation. We will continue to identify and undertake outreach activities throughout the transitional period, to make those businesses aware and thank those respondents who offered suggestions to aid in remedying this position.
- 3.6.5 The inclusion of the statement “Those considering whether their activities and operations fall within this broad range of specified activities and operations should

adopt an approach that prefers inclusion over exclusion”, is merely to indicate that a conservative approach should be taken and as such remains in the guidelines.

- 3.6.6 Having considered the feedback related to trust company business common place lending activities, it is agreed that a blanket exclusion is not appropriate. There is no sufficient rationale, using quantitative evidence, then can be made at this time to justify an exemption in line with the FATF’s criteria for exemptions. The guidelines have however been expanded to include indicators that may assist in determining, based on individual facts, whether a lending arrangement may or may not be out of scope.
- 3.6.7 It is important to note that TCSPs who are acting as trustees are within scope regardless of any lending activity undertaken.

3.7 Question 6 – paragraph 3.7.7 of the CP

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

- 3.7.1 The majority of respondents provided comments to this question. These were, in the main, regarding the definition of ‘conducted as a business’ and/or ‘customer’ and in particular:
 - 3.7.1.1 A small number of respondents felt that Sections 1.2 and 1.3.6 of the Guidelines were not helpful in determining ‘as a business’ by reference to the FATF Standards
 - 3.7.1.2 A small number of respondents also felt the concept of customer should be more clearly sign-posted as being directly linked to the ‘as a business’ filter
 - 3.7.1.3 It was suggested words “conducted as a financial services business” at the end of paragraph 1.3.7 were not helpful as they conflate the use of “as a business”
 - 3.7.1.4 Suggestions that clearer de-minimus thresholds both in terms of the absolute level of activity and quantum of compensation be introduced to ensure only actual businesses carrying out multiple transactions for multiple clients are in scope
 - 3.7.1.5 Requests for the indicators at paragraph 2.1.4 to be more definitive
 - 3.7.1.6 The question of whether a ‘customer’ exists in the context of ‘conducting a business’ in certain circumstances, i.e., SPV companies established to act as trustees to JPUTs or non-fund holding companies/partnerships and
 - 3.7.1.7 Many respondents were eager to confirm that professional trust companies (**PTCs**) could be treated in the same way as non-professional trustees when managed or administered by TCBs, this being a more proportionate approach. A small number of respondents suggested that if such approach was not adopted the treatment of PTCs within Industry would vary even though they may present the same risk from an AML/CFT perspective, due to the fact not all PTCs earn their own fees.
- 3.7.2 More general comments related to:
 - 3.7.2.1 A request to extend the circumstances in which the activity of trading would not be doing so for a customer as set out in paragraph 2.2.8.1
 - 3.7.2.2 A need for clarification in respect of the term “appropriately notified” as contained within paragraph 2.6.5.2

- 3.7.2.3 A suggestion that it might be more appropriate to use the defined term 'identical beneficial ownership' at paragraphs 2.2.8.2 and 2.4.9 and
- 3.7.2.4 The complexity of the overall tests for determining whether a business is in scope.

Government and JFSC response:

- 3.7.3 Flow charts have been included in the Guidelines to assist in considering whether an activity or operation of an entity is in scope. The flow chart related to an FI activity or operation clearly sign-posts the concept of customer as being linked to the 'as a business' filter.
- 3.7.4 The test for a TCSP differs to that of an FI as the trustee acts as a business in relation to "third parties". This is reflected in the flow chart related to TCSPs. Additional wording has also been added to the Guidelines to clarify that a trustee acts for third parties and those third parties include for example, settlors and persons with a beneficial interest in the trust.
- 3.7.5 Paragraph 1.3.7 has been amended following the feedback received, noting that non-professional trustees of express trusts are not acting as a business and the Amending Law will amend the recast schedule 2 to reflect this.
- 3.7.6 The existence of a business cannot be determined by the amount of actual activity or quantum of compensation. For this reason, limits and de-minimis thresholds have not been introduced into the Guidelines.
- 3.7.7 The list of indicators that a person is conducting an activity or operation as a business is not definitive. This is intentional as the FATF standards are not prescriptive. This is to avoid inadvertently excluding or including entities within the scope of the regime.
- 3.7.8 Under the existing regime, all Schedule 2 businesses are required to provide updates to their principal and key persons to the JFSC using the following form: <https://www.jerseyfsc.org/media/5827/f-sch2-notification-of-change-mlco-mlro-august-2022.docx>
- 3.7.9 The suggested amendments to paragraph 2.1.8.1 (now 2.2.10.1) could inadvertently result in certain business arrangements, including funds and securities issuers being excluded. For this reason, the proposed amendments have not been made.
- 3.7.10 Paragraphs 2.2.8.2 (now 2.2.10.2) and 2.4.9 are driving to situations where there is common ownership by a sole beneficial owner only, also it is expected that the activities are part of business activity under common direction. The test for common ownership is factual. There is no reference to the three-tier test as it would be inappropriate to apply in these circumstances and would not give the result intended. The proposed alternative terms have not therefore been used. However, both paragraphs have been amended to clarify the position.

3.8 Question 7 – paragraph 3.7.9 of the CP

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

- 3.8.1 Given that Question 7 was an open question, responses included a whole range of comments, many of which have been addressed at Section 2 above. More general comments related to:
- 3.8.1.1 A request to amend the guidelines to widen personal dealing to not only retired persons but all persons

- 3.8.1.2 A request to amend paragraph 3.11.1 to include consideration of whether a person has a customer when determining that personal trading is not captured under the definition of trading
- 3.8.1.3 Clarification as to whether reference to “Letting companies” at paragraph 3.17.3 extended to property managers or any other elements of property management and
- 3.8.1.4 A request for greater clarification regarding activities that may not be considered VASP activities.

Government and JFSC response:

- 3.8.2 Reference to a retired person in the context of self-dealing is merely an example and as such should not be interpreted as being the sole situation in which dealing may not be as a business.
- 3.8.3 Letting companies were given by way of an example of the types of activities and operations that might be considered an activity “Investing, administering or managing funds or money on behalf of other persons where such activities are not otherwise listed”. The list of examples given is not intended to be exhaustive and as such, it is possible the term ‘property managers’ may in some instances be considered interchangeable with the term ‘letting companies’.
- 3.8.4 Taking feedback into account, the paragraph regarding activities that may not be considered VASP activities has been deleted from the guidelines to avoid potential confusion.

3.9 Question 8 – paragraph 3.7.11 of the CP

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

- 3.9.1 The majority of respondents provided comments to this question. These were, in the main, with regard to:
 - 3.9.1.1 The definition of “funds” with respondents being equally split between those who felt the definition was “consistent with existing legislation” and those who felt it was too broad. Where it was felt the definition was too broad, the primary concern raised was that older, Very Private Funds, will be captured despite the fact they do not generally operate risk spreading
 - 3.9.1.2 Concerns that based on the proposed language, all companies administered by the financial services sector, regardless of the activities they undertake would be caught by virtue of companies issuing their own shares and
 - 3.9.1.3 The definition of “securities” with some respondents raising concerns that the definition under the POCL is broader in its meaning than under the FSJL for example.
- 3.9.2 A suggestion was received from one respondent that the Guidelines would “benefit from examples of activity which show a distinction between when risk spreading has occurred or not”.
- 3.9.3 One respondent advised they had not had the opportunity to review Part 2.

Government and JFSC response:

- 3.9.4 We acknowledge the concerns raised in respect of Very Private Funds, but it remains the case that there will be Very Private Funds that are funds and if they are not funds

may be securities issuers. A blanket exemption to this category of entities will require quantitative evidence, which is not yet available, to support the justification of an exemption in line with FATF's criteria.

- 3.9.5 It was not the intention to automatically capture all companies administered by the financial services sector as 'securities issuers'. Having regard to the feedback received, paragraphs 2.2.8.3 (now 2.2.10) has been amended with the phrase "outside of the financial services sector" being removed and the previous paragraph 3.12.1 has been deleted.
- 3.9.6 Reference to risk spreading in the context of these guidelines relates to Jersey funds, this is not a globally accepted test for securities issues. We would highlight that the term 'risk spreading', is a term also used at Article 3(2)(c) of the Collective Investment Funds (Jersey) Law 1988.
- 3.9.7 The definition of 'securities' is, as respondents have identified, wider in its meaning and therefore its scope. This is intentional to ensure the definition aligns with that provided by FATF.

3.10 Question 9 – paragraph 3.7.16 of the CP

Do you have any further comments on the draft guidelines on interpretation at Appendix A: Draft guidelines on interpretation under Article 36 of POCL?

- 3.10.1 Nearly half of the respondents confirmed they had additional comments on the draft guidelines. An analysis of these comments identified that they all related to the common themes addressed in Section 2 above or had been addressed elsewhere in this feedback paper with the exception of:
- 3.10.1.1 One respondent helpfully suggested the JFSC publish, to assist advisers and service providers in delivering consistency to how the new regime is applied, any common points of clarification or similar the JFSC are asked to assist with as businesses complete their assessment and registration processes and
- 3.10.1.2 A query as to whether the JFSC will grant some leeway for PESP's which register late.

Government and JFSC response:

- 3.10.2 We thank the respondent for their suggestion. Where general queries are raised and a trend or pattern of common themes emerges, the JFSC will look to share those points with Industry.
- 3.10.3 We have and continue to encourage businesses to review the activities they conduct or undertake in line with the recast Schedule 2 which was enacted in June 2022 but is not yet in force. We do not therefore anticipate granting leeway.

3.11 Question 10 – paragraph 3.8.4 of the CP

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

- 3.11.1 Over half of the respondents agreed the draft Codes of Practice and Guidance provided sufficient clarity with many raising additional commentary covered elsewhere in this FP.
- 3.11.2 More general comments included:

- 3.11.2.1 A request to include those exemptions that are falling away for TCBs to ensure PESP's know what is now in scope and can undertake the various steps required during the transitional period
- 3.11.2.2 A suggestion that paragraph 27 of the Codes of Practice be amended such that the requirement for an AMLSP to notify its PESP of failures to comply with the requirements of the Money Laundering Order or the AML/CFT Handbook should be restricted to instances where the failure identified related to that PESP, rather than failures in respect of the AMLSP services provided to others.

Government and JFSC response:

- 3.11.3 By way of a reminder, the list of exemptions that are falling away were contained in Appendix B to the original consultation paper issued in December 2021. For ease of reference, we include here the link to that list: [scope-exemptions-cp-appendix-b.pdf \(jerseyfsc.org\)](https://www.jerseyfsc.org/scope-exemptions-cp-appendix-b.pdf)
- 3.11.4 Having considered the request to amend the language in paragraph 27, it has been determined that doing so may create difficulties for PESP's in undertaking their oversight of an AMLSP and inadvertently create additional work for an AMLSP in this respect. The scope of this paragraph has not therefore been restricted.

3.12 Question 11 – paragraph 3.8.96 of the CP

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

- 3.12.1 A number of comments were received from respondents seeking additional guidance or clarity in respect of the duties of an AMLSP and how these might be met.
 - 3.12.1.1 Many respondents felt the suggestions included in the draft Codes of Practice and Guidance to assist with workloads were helpful but thought these could be:
 - › Enhanced to include additional information and
 - › More prominent within the guidance
- 3.12.2 More general comments included:
 - 3.12.2.1 A query as to how “the JFSC expect the situation to be managed where it is known by the authorities/JFSC that an AMLSP is not performing and has specific risks inherent in its business which affects its ability to provide its services and ensure its PESP's comply with their obligations, where this fact is not public knowledge” and
 - 3.12.2.2 A query as to why the reporting frequency should be determined by the AMLSP rather than the board of the AMLSP.

Government and JFSC response:

- 3.12.3 Our thanks goes to those respondents who informed us of a typographical error that resulted in paragraph 47 reading that a PESP must adopt the BRA, AML/CFT Strategy and Policies and Procedures of its AMLSP. Paragraph 47 was intended to refer to the CRA rather than BRA and has now been deleted.

- 3.12.4 As mentioned above, the Codes of Practice and Guidance have been amended to better draw out and expand upon the ways in which AMLSPs might seek to achieve adherence to the AML/CFT obligations in a streamlined manner.
- 3.12.5 The mechanism for internal SAR Reporting should be set out in the agreement between the AMLSP and the PESP. Where the suspicion arises in relation to the PESP activities, it is anticipated that this should be reported by way of an iSAR, to the PESP MLRO notwithstanding it might be necessary to also report it to the AMLSP MLRO where appropriate to do so.
- 3.12.6 As to the management of non-performance of an AMLSP, the provisions of original paragraph 27, now paragraph 24 of the Codes of Practice should be taken into consideration, particularly as part of the ongoing oversight of an AMLSP by its PESPs.
- 3.12.7 The responsibility for corporate governance, including determining the frequency of meetings rests solely with a PESPs governing body. In making such determination, the governing body of the PESP should be minded to the complexity of its activities and operations and all other appropriate risk factors.

3.13 Question 12 – paragraph 3.8.9 of the CP

Do you consider that the table at 18.2 within Appendix B: Draft Codes of Practice and Guidance for Designated Service Providers includes all of the relevant obligations?

- 3.13.1 The majority of respondents confirmed they were in agreement that all of the relevant obligations are captured in the table at 18.2. On reflection however, we have removed this table. The reason for this is two-fold. Firstly, to avoid any duplication or confusion with the newly inserted table at paragraph 55 and secondly to avoid including a table where the referencing may be obsolete in short order. The CP together with its appendices, will remain on the JFSC's website should individuals wish to refer to the original table at paragraph 18.2.
- 3.13.2 Two respondents referred to concerns they had raised earlier in their responses and a further one respondent advised they not yet considered the table at 18.2.

3.14 Question 13 – paragraph 3.8.10 of the CP

Do you have any other comments on the draft Codes of Practice and Guidance for Schedule 2 businesses and DSPs [now AMLSPs] at Appendix B: Draft Codes of Practice and Guidance for Designated Service Providers?

- 3.14.1 The majority of respondents provided no additional comments.
- 3.14.2 Of the additional comments received, these related to comments covered elsewhere in this feedback.

3.15 Question 14 – paragraph 3.8.11 of the CP

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

- 3.15.1 There were several additional comments, many of which have been covered elsewhere in this FP. More general comments included:
 - 3.15.1.1 The limited length of time available to consider and respond to the consultation

- 3.15.1.2 Concerns that NEDs will be subject to “unrealistic demands and expectations in relation to enhanced AML regulations” and that “any material expansion of the AML requirements currently applicable to natural persons acting as NEDs could result in individuals declining to occupy such roles
- 3.15.1.3 A query as to the JFSCs ability to effectively authorise/supervise a significantly increased number of regulated businesses
- 3.15.1.4 A question as to why an outreach and testing process in industry was not conducted prior to the consultation or alongside it
- 3.15.1.5 A suggestion that it would be helpful if the 2009 Guidance Note in respect of Natural Persons carrying on a single class of Trust Company Business could be update in line with this consultation
- 3.15.1.6 One respondent sought clarification as to whether the proposed amendments generally would carry a subsequent impact to Article 16(4)(b) of the Money Laundering Order and
- 3.15.1.7 A suggestion that the Working Group would have benefited from industry guidance as to how practical some of the requirements are and that the composition of working groups should be relevant to the topic/matter under consideration.

Government and JFSC response:

- 3.15.2 We acknowledge the concern raised by one respondent regarding the length of the consultation period but observe that the consultation period for this follow-on consultation was in line with the consultation period for the initial consultation.
- 3.15.3 The board of a supervised person is responsible for ensuring the supervised person is compliant with AML/CFT requirements and as such all directors are required to have sufficient knowledge of the AML/CFT requirements. The JFSC does not distinguish between directors and non-executive directors and each individual director is equally liable within a board context (notwithstanding the different profile of board members).
- 3.15.4 A director who is holding themselves out as providing director services, in exchange for remuneration, will be conducting TCSP business, whether conducting such business independently, or through the provision of others to act as directors. If you are in that business, you may have one or zero directorships at any given time, but you will still be conducting TCSP as a business. It is important to reiterate here that if a person is not providing director services “as a business”, they will not be considered within scope.
- 3.15.5 All exemptions associated with the role of a director, executive or non-executive, no longer exist. This includes the de-minimis exemption that previously provided a director of not more than 6 companies to be exempt from AML/CFT registration as a TCSP.
- 3.15.6 The JFSC, as demonstrated by its [2022 business plan](#) budgeted for increased targeted staff to handle increased volumes of activity in supervision, particularly in relation to the expansion of new regimes.
- 3.15.7 The application of Article 16(4)(b) is not impacted by the amendments being made. The obligations arising from Article 16(4)(b) are not altered.

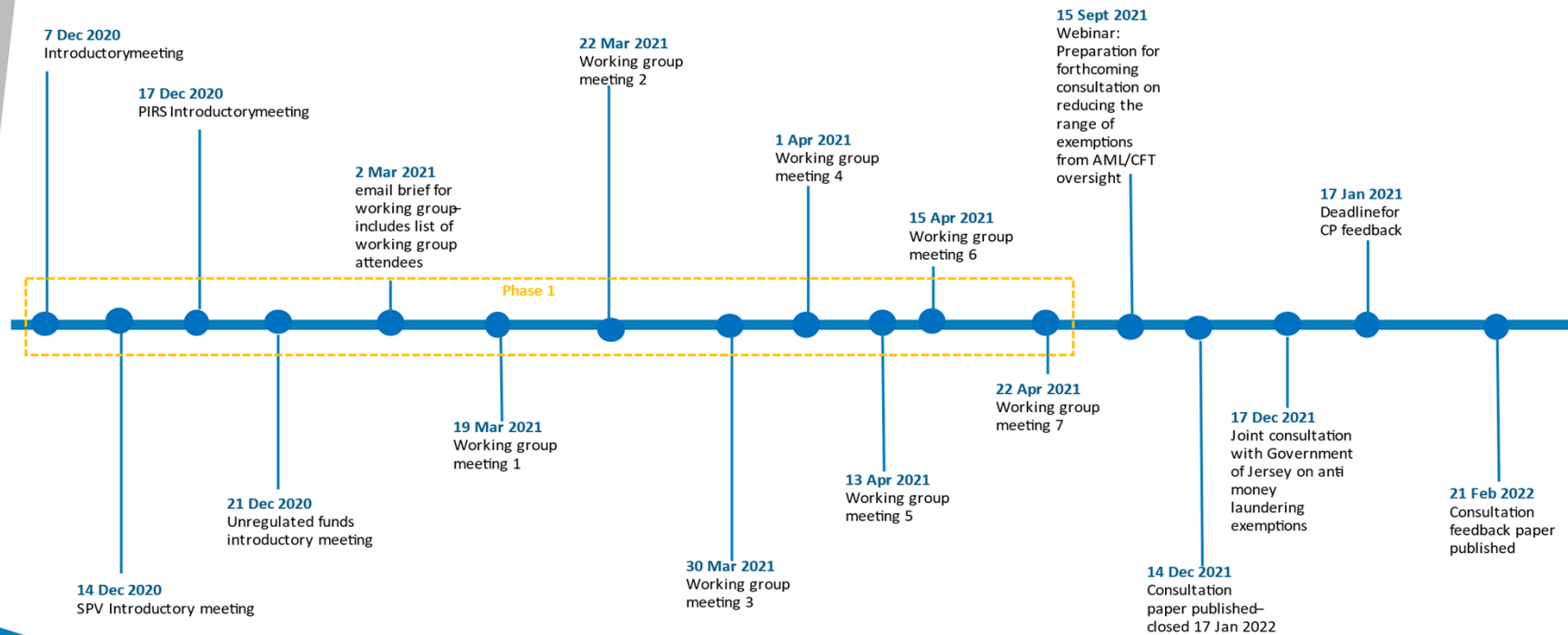
- 3.15.8 The Working Group was a cross section of experienced practitioners from regulated and non-regulated firms and included people from Industry representative bodies which first came together in December 2020 to consider the exemptions scope.

Appendix A: List of Respondents

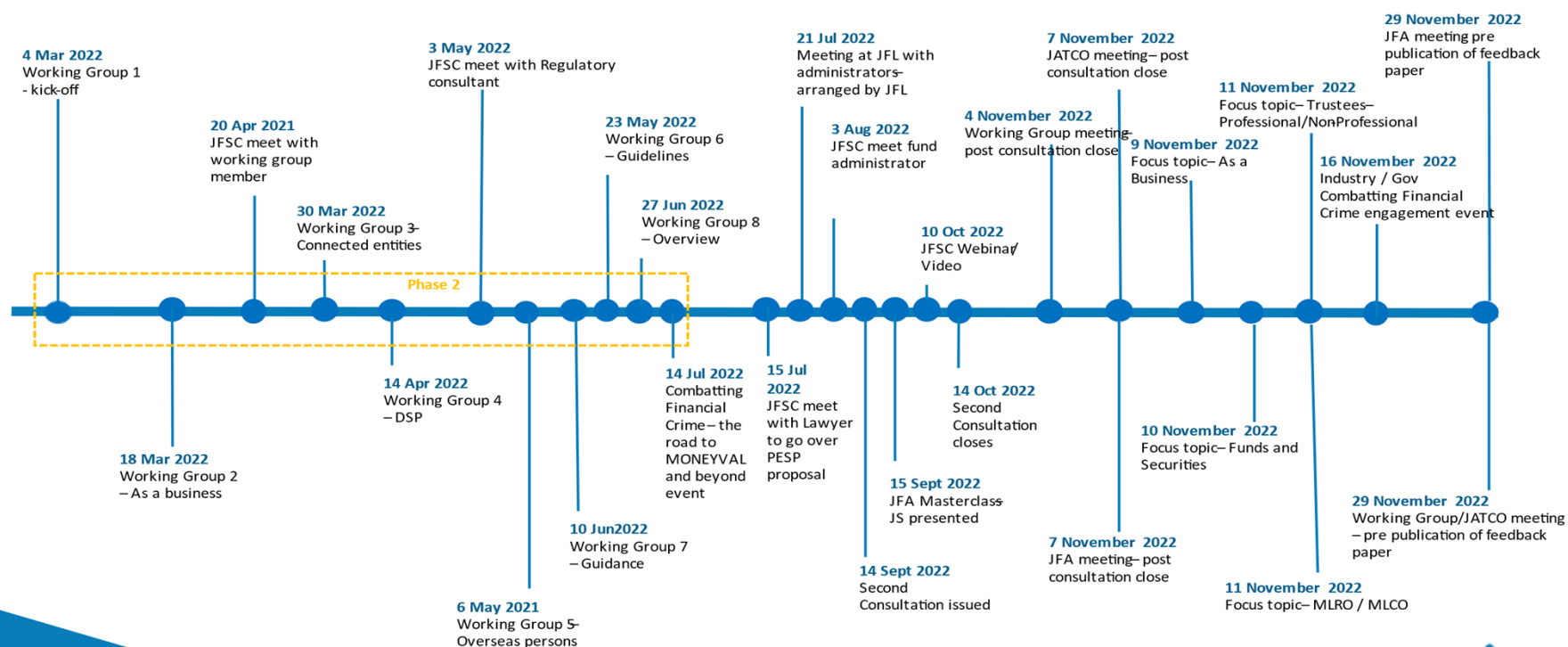
- › FSB and TCB licence holder (x6)
- › Jersey Funds Association
- › Jersey Association of Trust Companies
- › FSB, TCB, MSB and DC licence holder
- › Law firm (x3)
- › Regulatory consultancy firm (x 2)
- › Private single-family office
- › VASP
- › TCB licence holder – natural person

Appendix B: Engagement Timeline

Engagements Timeline



Engagements Timeline



Appendix C: Guidelines on interpretation of schedule 2 business under Article 36 of the POCL

[Appendix C: Guidelines on interpretation of schedule 2 business under Article 36 of the POCL](#)

Appendix D: Draft Codes of Practice and Guidance

[Appendix D: Draft Codes of Practice and Guidance](#)