

Schedule 2 business: Private Trust Companies & Family Offices

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Introduction

These frequently asked questions have been collated to respond to queries from Industry. They may be updated from time to time.

Glossary

Terms used in this document:

AML/CFT/CPF	Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing.
Express Trust	A trust created by the express declaration of a settlor or a trustee made orally, by instrument in writing or by will.
PTC	Private Trust Company
Schedule 2	Schedule 2 to the Proceeds of Crime (Jersey) Law 1999

1 Background: Why was Schedule 2 amended?

On 30 January 2023 the list of activities and operations required to comply with measures to prevent money laundering, terrorist financing and proliferation financing contained in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 (Schedule 2) was amended. Jersey has a long-standing commitment to comply with the international standards against money laundering and terrorist financing developed by the Financial Action Task Force (FATF).

An assessment of Jersey's adherence against those standards was conducted by MONEYVAL in 2015. Following that assessment, it was determined that Schedule 2 should be recast so that all activities and operations subject to AML/CFT obligations mirror the definitions within the FATF Recommendations.

2 Following the amendments to Schedule 2, are family offices now automatically in scope and required to register with the JFSC?

No. It is the activities being undertaken that must be considered in order to determine whether a family office (including each entity comprising the family office) is in scope.

A family office will only be in scope and required to register with the JFSC if they are undertaking an activity or operation that is a Schedule 2 activity and are doing so 'as a business'. See question 5 for further details.

3 What do the amendments to Schedule 2 mean for a Private Trust Company (PTC)?

A PTC does not need to register under the Financial Services (Jersey) Law 1998 as a trust company business provided:

- › The purpose of the PTC is solely to provide trust company business in respect of a specific trust or trusts.
- › The PTC does not solicit from or provide trust company business to the public.
- › The PTC is administered by a trust company business that is regulated by the JFSC.
- › The name of the PTC is notified to the JFSC.

Historically, this also meant that a PTC was exempt from AML/CFT/CP obligations (although its regulated trust company service provider was required to carry out customer due diligence measures in respect of the trust(s) services by the PTC). This is no longer the case.

PTCs are now required to register as a Schedule 2 business.

4 Is it correct that all trustees and all trusts are now in scope?

Acting as or arranging for another person to act as a trustee of an express trust or performing the equivalent function for another form of legal arrangement is a Schedule 2 activity. Trustees must therefore consider whether they are providing those trustee services 'as a business to third parties'. See question 5 for further details.

5 What is the test for determining whether persons are in scope for acting as Trustee?

Persons acting as trustee of an Express Trust are in scope if conducting services as a business and providing those services to a third party. There is a three-part test for determining whether trustees (natural persons or not) are in scope by reason of providing their services 'as a business'. It is necessary to determine whether or not a trustee is in scope "as a business":

- a) **You are acting as or arranging for another person to act as trustee of an express trust or performing the equivalent function for another form of legal arrangement.**
- b) **You are conducting those services as a business.**

If you have determined that you meet the criteria set out in sub section a) above, you must then consider whether you are doing so 'as a business'.

A legal person set up/established to provide trustee services will be considered as acting as a business unless it is demonstrated to the contrary.

For a natural person, there is no single test for determining whether you are conducting a service 'as a business'. This can be subjective, and indicators may include:

- › Employment of staff to manage trust assets
- › Advertising or promoting the provision of that activity or operation
- › Complexity of overall structures
- › Receiving business referrals for the purposes of providing those activities or operations
- › Receiving financial compensation, in any form – directly or indirectly
- › Intending to make a commercial gain in any form or supporting the commercial gain of a third party
- › Conducting more than one type of Schedule 2 business

c) You are providing those services to a third party

A third party to a trustee includes:

- › A settlor of the trust
- › A protector of the trust
- › A person who has a beneficial interest in the trust
- › A person who otherwise exercises control over the trust

If, having considered the above, you determine that you are conducting a Schedule 2 activity or operation as a business for third parties, you will be required to register with the JFSC and will become a supervised person, subject to the provisions of Jersey's anti-money laundering, counter terrorist financing and counter proliferation financing regime. Further details on what this means are set out below at question 15.

All Natural persons who are providing trustee services, not as a business, are subject to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016.

6 We have previously advised the JFSC of the name of our PTC and availed of the PTC trust company business exemption. We understand we can no longer rely on that exemption for AML/CFT/CPF purposes however, we wish to be considered as non-professional trustees under the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016 (the NPTO). Is this possible?

No. The NPTO only applies to natural persons. The NPTO was designed to cater for non-professional family/private arrangements around wealth management, inheritance, and asset protection. In such arrangements, the trustees ordinarily do not receive fees/remuneration are not usually present.

A legal person set-up/established to provide trustee services will be considered as acting 'as a business' unless it is demonstrated to the contrary.

7 I am a trustee of a trust established for the benefit of my best friends' children. Am I in scope?

A natural person who acts as a favour for family or friends, or due to some other personal commitment, and is either unpaid or receives only a token reward, will not be acting as a business and would instead be providing their services as a non-professional trustee.

In this instance, as a non-professional trustee, you will be subject to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016.

8 We have a trust that has been established solely for the purpose of managing the assets of a single family. The trustees are individual family members and family office employees. What do the amendments to Schedule 2 mean for each of those parties?

- › **The trust – Potential impact.**
Impact will depend on the activities being undertaken by the trust. The trust itself will only be in scope if, it is undertaking an activity or operation that is a Schedule 2 activity and is doing so 'as a business'.
- › **The trustee who is a family member – Potential impact.**

A natural person who acts as a favour for family or friends, or due to some other personal commitment, and is either unpaid or receives only a token reward, will not be acting 'as a business' and would instead be providing their services as a non-professional trustee. A trustee who is an immediate family member and is a paid trustee should consider whether they are being paid something more like a commercial reward and could therefore be considered to be acting 'as a business'. If this trustee is providing trustee services 'as a business' (refer to question 5) then they will be in scope and be required to register with the JFSC.

› **Trustee who is a family office employee – No impact.**

Where during the course of your employment you have also been appointed as a trustee to a family office trust, you are not doing so 'as a business'. You receive a salary by virtue of being employed but do not receive remuneration specifically or solely in relation to your role as a trustee.

All Natural persons who are providing trustee services, not as a business, are subject to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016.

9 As a natural person who is an executor, can I continue to take advantage of the exemption under the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000, Schedule Part 1 paragraph 3?

Not for AML/CFT/CPF purpose. Historically an executor or administrator of the estate of a deceased person could avail of an exemption in respect of certain of its AML/CFT/CPF obligations. This is no longer the case.

Executors and administrators of estates are now required to consider whether they are providing those services 'as a business' (refer to question 5).

10 My husband and I have placed our family assets, including an investment portfolio, into a trust. In the following situations, are either or both of us now in scope as trustees who are required to register with the JFSC?

- › Where we jointly manage those assets in our spare time
- › Where only one of us manages those assets in our spare time for the benefit of us both

Where you are acting in a personal capacity in respect of your own assets for your own benefit, you and those of your spouse, are not carrying out the activity of trustee 'as a business'. In this instance, as a non-professional trustee, you will be subject to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016.

The trust may however (through its trustees) be undertaking a Schedule 2 activity as a business and be required to register as a Schedule 2 business in respect of that activity. The registration application form would need to be completed by you as trustees of the trust.

11 I am a natural person who is the trustee of a charitable trust. Am I in scope?

A natural person who is the trustee of a purely stand-alone charitable trust who receives no compensation for their role is not in scope and does not need to register. In this instance, as a non-professional trustee, you will be subject to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016.

Where the charitable trust is part of a commercial structuring arrangement, it may be in scope. See question 5.

12 I am only a director of a PTC by virtue of my employment in a TCSP. Am I in scope as a director of that PTC?

No. Where during the course of your employment you have also been appointed as a director to a PTC, you are not doing so 'as a business'. You receive a salary by virtue of being employed but do not receive remuneration specifically or solely in relation to your role as a director of the PTC.

13 I am a natural person acting as trustee of the employee pension scheme for the company I am employed by. Am I now in scope?

No. Where during the course of your employment and ancillary to your main duties of employment, you have been appointed as a trustee to the employee pension scheme of your current employer, you are not doing so 'as a business'. You receive a salary by virtue of being employed but do not receive remuneration specifically or solely in relation to your role as a director of the employee pension scheme. As a non-professional trustee, you will be subject to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016.

14 I am in scope, what do I do now?

You will need to register with the JFSC. The application form to register can be found here: [Schedule 2 Forms — Jersey Financial Services Commission \(jerseyfsc.org\)](https://www.jerseyfsc.org/schedule-2-forms).

15 I am in scope, what are my AML/CFT/CPF obligations and how can I discharge them?

Where you are providing trustee services 'as a business to third parties' you are required to meet the AML/CFT/CPF obligations set out in the Money Laundering (Jersey) Order 2008 (the Money Laundering Order) and the AML/CFT/CPF Handbook (the Handbook). At a high level, you are required to:

- › Ensure a risk assessment is carried out, identifying where your business is vulnerable to ML/FT/PF. For clarity this relates to your business of providing trustee services and includes the risks imposed by your customers.
- › Ensure written policies and procedures are in place and maintained to show how the business will manage the risks of ML/TF/PF identified in the risk assessment.
- › Ensure policies and procedures are reviewed and updated to reflect changes to the risks faced by your business and that written records of the changes are kept.

16 I am in scope. Can I discharge my AML/CFT/CPF obligations through the appointment of an Anti-Money Laundering Services Provider (AMLSP)?

Provided all parties meet the requisite eligibility criteria (a non-professional trustee would not) and the AMLSP has obtained a prior no objection from the JFSC in relation to its key persons, they may, should they choose, appoint an AMLSP.

The AMLSP should however only provide services to a Schedule 2 business if they are able to comply with the requirements in section 18 of the AML/CFT/CPF Handbook.