

Schedule 2 business: lending FAQs

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:

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| AML/CFT/CPF | Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing. |
| 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 contained in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 (**Schedule 2**) was amended. If a person carries on such activities or operations as a business, they are required to comply with certain AML/CFT/CPF measures. 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/CPF obligations mirror the definitions within the FATF Recommendations.

2. Is all lending in scope?

No. Lending activity is only in scope if it is being undertaken 'as a business'.

As a business

There is no single test for determining whether that activity or operation is being conducted 'as a business'. This can be subjective, but indicators that lending is being conducted 'as a business' may include:

- › the loan transactions are frequent
- › the lending forms part of a commercial transaction or forms part of a broader commercial structure
- › where security is granted
- › the loan is based on arms-length commercial terms with regular repayments and a set or indicative final date for repayment
- › interest is paid on the loan

The indicators listed above do not represent an exhaustive list of considerations.

Where loans are structured via legal persons or arrangements, you should also consider the wider structure when determining whether such lending is being undertaken 'as a business'.

Loans made between group companies or connected companies may be lending 'as a business'. See question 11.

Once in scope, in certain **local lending** scenarios there is an exemption available from certain of the AML/CFT/CPF measures. Please see [local lending: low-risk AML/CFT/CPF exemption FAQs — Jersey Financial Services Commission](#) for more detail.

3. As trustee(s), we often lend money from the trust assets. In the following scenarios, does this mean that the trustee is now required to register in respect of that lending?

- › lending to a beneficiary
- › lending to another family trust
- › lending to a company within the trust structure
- › lending to third parties, including unconnected trusts and individuals

In determining whether each of these scenarios requires the trustee to register in respect of that lending, you must consider whether the lending to those parties is being undertaken 'as a business'. See question 2 above.

4. The lending of trust assets is often part of a transaction but only ancillary to that transaction. In these instances, is the trustee now required to register in respect of that lending?

An analysis will have to be taken on a case-by-case basis. The fact that lending may be ancillary to another activity or transaction is not relevant in determining whether the trustee must register in respect of such lending. It should also be noted that the level of financial compensation, however received, from the activity of lending (both in terms of the quantum and as a proportion of the total income), is not the sole factor for determining whether a trustee is in scope in such instances. The trustee must consider whether the lending is being undertaken as a business. See question 2 above.

5. I undertake lending as a private individual. What do I need to do?

Private individuals conducting lending 'as a business' have been required to register with us since 2008. If you have determined that you are undertaking lending 'as a business' (see question 2 above), and are in scope, you will need to register with us. Please see question 12 for more information.

As noted above, there is an exemption from certain of the AML/CFT/CPF measures available in certain local lending scenarios. Please see [local lending: low-risk AML/CFT/CPF exemption FAQs — Jersey Financial Services Commission](#) for more detail.

6. Is payment of interest on a loan the key/sole factor in determining whether lending is being conducted as a business?

No. Payment of interest is an indicator, but is not the sole factor for determining whether lending is being undertaken 'as a business'. See questions 2 and 4 above.

7. It is not unusual for a trustee to provide multiple loans from a trust's assets throughout the course of a year. If it is determined that occasionally a loan may be considered as being provided 'as a business to a customer', should the trustee de-register in respect of its lending activity once those loans have been repaid?

In this example, a trustee is lending a trust's assets periodically and has determined that, on occasion, it is doing so as a business to customers. The trustee would need to ensure that it has registered with us:

1. in respect of all existing lending and/or
2. in advance of any new lending as a business to a customer taking place

It is recognised that there may be times where the trustee is not undertaking the activity of lending but is likely to do so again throughout the course of its existence. In such instances, it will be necessary for the trustee to consider whether it wishes to remain registered in respect of that activity during the intervening periods.

We would not expect a trustee to frequently register and de-register, but rather to take a view that it may be more appropriate to continue to remain registered where it considers there will be future lending as a business to a customer.

8. If I want to lend money to my sibling, will I now be in scope?

Generally, we do not consider personal lending between immediate family members to be within scope. However, an assessment should still be undertaken as to whether the lending is conducted 'as a business'.

9. Special purpose vehicles (SPVs) often make loans, but the loans are usually incidental to the wider activities of the structure. The financial compensation received as a result of undertaking the lending is, in the overall scheme of the wider structure, negligible. Do these SPVs have to register as a Schedule 2 business?

The level of financial compensation, however received, from the activity of lending (both in terms of the quantum and as a proportion of the total income), is not the sole factor for determining whether an entity is in scope.

You must consider whether the entity, by undertaking lending, is doing so 'as a business'. See question 2 for further details.

The SPV should also consider whether it is carrying on any other type of 'financial services business' as a business, such as 'Fund and security services activities' and if appropriate, should apply to register to carry on those other types of Schedule 2 business.

10. Is a loan that is not in writing within scope?

Whether a loan is in writing is not, of itself, determinative of the activity being in scope. You must consider whether the lender is undertaking lending services 'as a business'. See question 2 for further details.

11. Can group companies or family offices with the same beneficial owner be considered to be undertaking related party transactions rather than undertaking lending 'as a business'? Does the position change if trust assets are lent to an underlying company within the same structure?

Loans between intra-group companies/group companies, connected companies or other types of structure (i.e. trusts, partnerships etc) may be lending 'as a business' depending on the circumstances. This includes, but is not limited to:

- › loans from trust assets to an underlying company
- › an intra-group company that is lending on commercial terms to other group companies between legal persons that are connected by a common ownership

We and the Government of Jersey acknowledged in the joint Feedback Paper (issued February 2022) (the Feedback Paper) to the original consultation on AML/CFT Scope Exemptions that "arguments that intra-group activities (i) do not form customer relationships, and (ii) are not by way of business, seem, prima-facie, compelling...". However, the Feedback Paper also recognised that the overarching aim of the amendments to Schedule 2 are to align Jersey's AML/CFT/CPF regime to the FATF Standards meaning that any quantitative and qualitative data related to such intra-group activities would need to support the low-risk assertion of such activities.

At the time of the Feedback Paper being published, it was concluded that such data was not available and as such, it was not possible to justify an exemption within the FATF's criteria for exemptions*. This position has not changed. The need to be aware of the activities being undertaken 'as a business' within groups, including where any or all of the connected parties are natural or legal persons that are resident/registered in Jersey, remains.

*Exemptions whether full or partial, can only be granted where the criteria as set out in the FATF Standards are met:

"there is an assessed low risk of money laundering and terrorist financing; the exemption occurs in limited and justified circumstances; and it relates to a particular type of financial institution or activity, or DNFBP" or "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”.

12. I am in scope, what do I do now?

If, having considered the above, you determine that you are lending as a business you will be required to register with us and will become a supervised person, subject to the provisions of Jersey’s AML/CFT/CPF regime. Further details on what this means and how these duties can be discharged are set out below.

The application form to register can be found here: [Schedule 2 Forms — Jersey Financial Services Commission \(jerseyfsc.org\)](https://jerseyfsc.org).

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

Where you are providing lending services, including as a trustee of a trust or an SPV undertaking lending ‘as a business’ 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).

14. 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 and the AMLSP has obtained a prior no objection from us in relation to its key persons, you may, should you 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.

If this is not applicable, see question 12.

15. Trust assets can sometimes be lent to a beneficiary on commercial terms. This can be for various reasons, not least, tax planning. Will such arrangements now be in scope?

The activity of lending is a Schedule 2 activity. Registration of this activity is only required if the activity is being undertaken ‘as a business for or on behalf of a customer’.

The lending of trust assets on commercial terms does not automatically result in the trustee having to register as a Schedule 2 business for lending purposes. Commercial terms are an indicator that lending is being undertaken ‘as a business’ but is not the sole factor for determining whether lending is being provided ‘as a business’. A trustee would need to consider the specific facts as a whole when making their determination as to whether the lending is ‘as a business’.

16. I am a private lender who provides a number of small loans per annum to Jersey resident borrowers. There is a broker who acts for the borrower and manages the transaction, including undertaking a risk assessment on the borrower. Due diligence is undertaken on both me as a lender and on the borrower prior to monies passing lawyer to lawyer. The transaction is registered through the Royal Court and the securitisation of assets is in my name. Am I required to register?

The number and value of the loans you make is not relevant in determining whether you are in scope. You must consider whether, by lending, you are doing so as a business. The involvement of a broker and/or the taking of security in this manner is highly indicative that such an arrangement is, as a business.

Please also refer to question 2 for further indicators that lending is being undertaken as a business.

As noted above, there is an exemption from certain of the AML/CFT/CPF measures available in certain local lending scenarios – please see [Local lending: low-risk AML/CFT/CPF exemption FAQs — Jersey Financial Services Commission](#) for more detail.

17. As a retailer who offers fixed sum credit with deferred payments, are we now considered to be a lender and required to register as a Schedule 2 business?

No. This type of activity is considered to be a financial leasing arrangement. Financial leasing arrangements in relation to consumer products are not considered to be within scope of Schedule 2.

18. I no longer wish to lend monies but do still have some 'live' loans with terms not due to conclude until after 30 June 2023. Do I still need to register?

Private individuals conducting lending 'as a business' have been required to register with us since 2008 unless they were able to avail of an exemption from registration. This exemption has been removed. All individuals conducting lending 'as a business' must be registered with us regardless of where they are in the lifecycle of their lending business.

19. I provide funds to a Schedule 2 business which undertakes lending activities as a business. Am I considered to be a lender who is in scope?

This will depend on whether you are lending money to the Schedule 2 business or investing in the Schedule 2 business in exchange for shares in that Schedule 2 business for example.

If you are lending money to the Schedule 2 business who then onward lends the money, you may be a lender who is in scope of Schedule 2. You will need to consider whether you conduct that lending 'as a business'. Please see question 2 for further information.

If you are investing your money into the Schedule 2 business which itself then onward lends, you are not, in this example, conducting lending as a business.

The Schedule 2 business would however need to ensure that it is fully regulated in respect of all activities it is undertaking in addition to the activity of lending under Schedule 2.