



Economy

Gouvernement d'Jèrri

Increasing the effectiveness of AML enforcement in Jersey

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Agenda



- i. FATF Requirements
- ii. 2020 Policy Proposal
- iii. Civil Financial Penalties
- iv. Failure to prevent ML/TF
- v. Deferred Prosecution Agreements

Requirements under the FATF Methodology



FATF Recommendation 35

- Range of effective, proportionate, and dissuasive criminal or civil penalties to deal with natural or legal persons
- Penalties are applicable to financial institutions *and* DNFBPs and
- Directors as well as senior management of financial institutions and DNFBPs

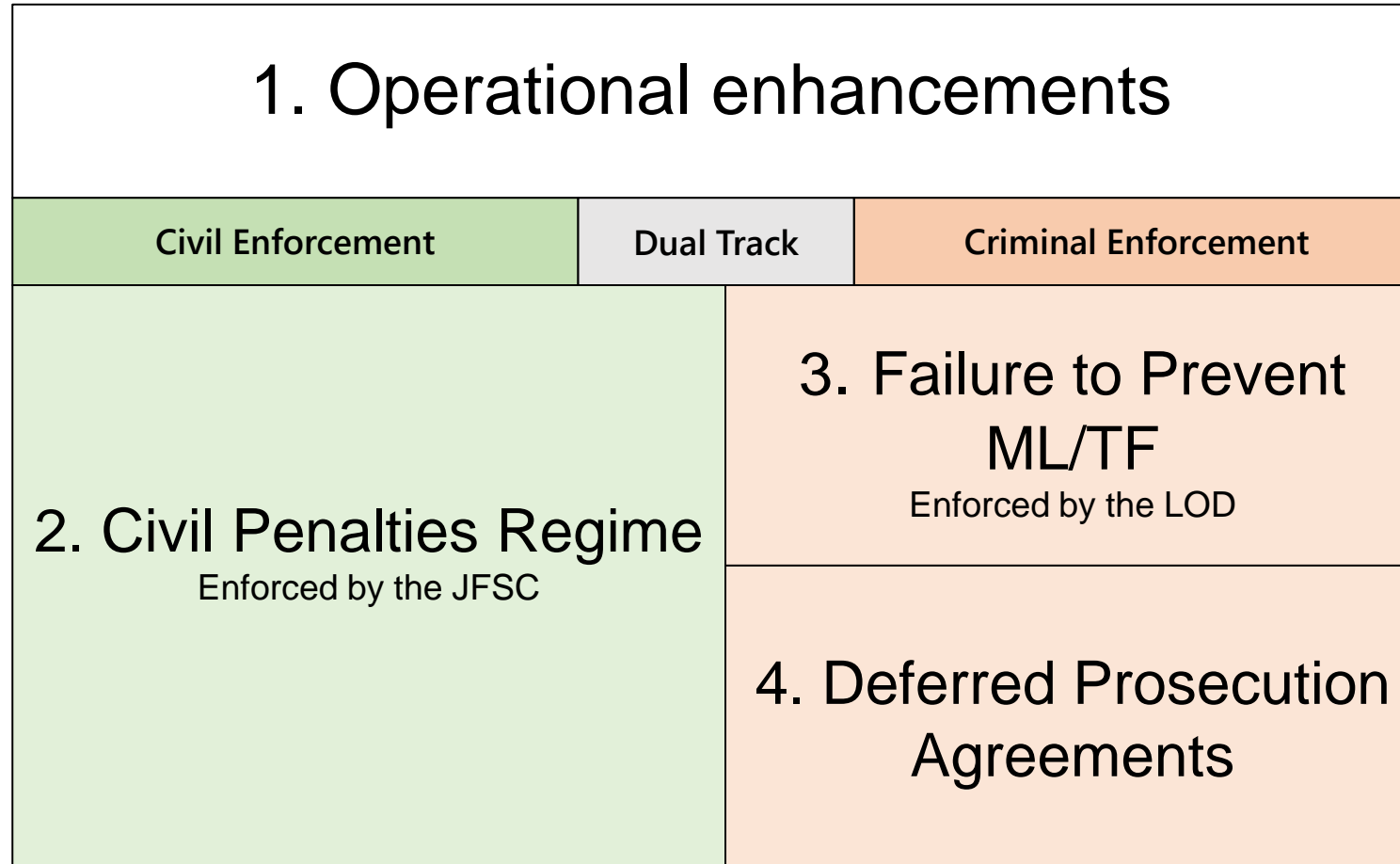
Immediate Outcome 3

- Supervisors appropriately supervise, monitor and regulate financial institutions, DNFBPs and VASPs commensurate with their risks
- Core Issue 3.4: To what extent are remedial actions and/or effective, proportionate and dissuasive sanctions applied in practice?

Immediate Outcome 7

- Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions
- Especially Core Issues 7.2 and 7.4 – see below

Increase Enforcement Effectiveness





Civil enforcement: Financial Services Commission (Amendment No. 8) (Jersey) Law 2022

- Civil financial penalties for significant and material contraventions of the MLO / Codes of Practice
 - Extends to DNFBPs
 - Adds “senior management function”, principal and key persons (MLROs) => JFSC SMF Notice: 13 March 2023
 - Extends to businesses that ought to be registered, but are not
 - Removes the absolute caps, maintains relative caps for each band of contravention
 - Bases the penalty calculation on turnover rather than relevant income
 - Extends the lookback window from 3 years to 6 years for individuals, removes time limit for legal entities
- ⇒ **Amendment looks to achieve technical compliance (Recommendation 35) and increase effectiveness (Immediate Outcome 3)**

Criminal enforcement



Importance of effectiveness
under IO7 – see Cayman

25 Feb 2021:
FATF 'Grey List' (3 IOs)

13 Mar 2022:
EU High-Risk Third Countries
List amongst Afghanistan,
North Korea, Iran, Myanmar,
Pakistan and Syria etc

21 Oct 2022:
FATF keeps Cayman on
'Grey List' due to continuing
ineffectiveness under IO7

Next stop: Monaco?

Jersey - 2015 MONEYVAL Report:

*"It is thus important for more suspicions of money laundering to be investigated and subsequently **more cases to be prosecuted** where there is evidence of domestic abuse [...] of complex legal arrangements and structures, arising from proactive parallel financial investigations in Jersey."*

2020 NRA ML:

*"Review the current legal framework for imposition of sanctions for breaches of AML/CFT obligations; and make changes where necessary to **facilitate the imposition of effective, proportionate and dissuasive sanctions where appropriate.**"*

Jurisdictional risk profile: layering through local entities



- **IO7 - Core Issues 7.2 and 7.4:**

- Prosecutions are in line with the jurisdiction's threats and risk profile and
- Effective, proportionate, and dissuasive sanctions against natural or legal persons

- **2020 National Risk Assessment of Money Laundering:**

- *“Given the type of activity undertaken by an IFC, Jersey is more likely to be exposed to the “layering” stage of money laundering – which typologies indicate regularly involve Banks, TCSPs or Funds – rather than the ‘placement’ stage.”*

⇒ **Especially important for Jersey that these legal persons can be held to account and sanctioned in an effective manner**



Identification Doctrine: The directing mind and will

- A criminal act can only be attributed to a legal person where a natural person committing the offence can be said to represent the “*directing mind and will*” of that legal person
- Legislators created two separate mechanisms to address DMW issues:
 1. Failure to prevent offences (FTP): more effective attribution of criminal liability to legal entities (reverse burden)
 2. Deferred Prosecution Agreements (DPAs): alternative mechanism to dispose of criminal conduct by legal entities, subject to certain conditions
- **UK:** FTP Bribery in 2010, FTP Tax Evasion in 2017, DPAs in 2013, FTP ML in 2023?
- **Jersey:** FTP ML in 2022, DPAs in 2023
- **Guernsey:** FTP Bribery, FTP Tax Evasion, FTP ML and DPAs in 2023



Proceeds of Crime (Amendment No.7) (Jersey) Law 2022

Failure to prevent money laundering – Art 35A POCL

- An FSB (which includes DNFBPs) commits an offence if an Associated Person (AP) engages in conduct which constitutes money laundering (includes TF)
- Fine for body corporates; up to two years' imprisonment and/or fine otherwise
- AP: acting in the capacity of an employee, agent, service provider or customer of the FSB
- No ML conviction of AP required
- Defence where FSB can prove adequately maintained and applied prevention procedures in relation to AP's activity
- Court to consider supervisory Codes of Practice

Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 2023



- Agreement between the AG and a legal entity
- Entity agrees to comply with the terms of the DPA and AG agrees not to progress proceedings
- **Eligibility: entity needs to submit a self-report first which contains all the relevant evidence**
- Entity cannot already be the subject of a prosecution
- Applies only to economic crimes (Specified Offences)
- May include a financial penalty, disgorgement of profits, charitable donations and remedial action
- Compliance with DPA is monitored by an Independent Monitor
- Terms can be varied or DPA can be discontinued
- Entire process is subject to judicial oversight by the Royal Court
- AG to publish guidance



Deferred Prosecution Agreements - Benefits

- Increase effectiveness of the criminal justice system in line with jurisdictional risk profile
- DPAs as a tool to secure *additional* 'prosecution' outcomes, not replacing *existing* prosecutions
- Encourage better cooperation with the prosecutor
- Cost-effective and less time-consuming
- Avoiding a criminal prosecution and the significant consequences
- Explicit option for rehabilitation
- Some room for negotiations with the prosecutor
- Remedial action by the company, thus reducing the vulnerability against future offending



What time is it?

- Government of Jersey Plan 2022-25: additional funding of £1.8m/pa for recruitment into key areas:
 - Financial Intelligence Unit additional 15 FTEs
 - Jersey Financial Crimes Unit, Ops additional 3 FTEs
 - Law Officers' Department additional 6 FTEs
- **Therefore, regarding the submission of a self-report ...**



the time is now!



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