

**Implementation of the 2012 FATF Recommendations on  
Anti-Money Laundering and Countering the Financing of  
Terrorism – proposed revisions to Jersey’s AML/CFT legal  
framework**

**27 July 2018**

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**Introduction**

Jersey is regarded as one of the most stable and successful International Finance Centres in the world and, working together responsibly, the Government, the regulator and industry must continue to uphold the reputation of Jersey for the good of the Island.

To this end, the Jersey Financial Crime Strategy Group (the “JFCSG”) is consulting on proposed revisions to Jersey’s anti-money laundering and countering the financing of terrorism (“AML/CFT”) legal framework, as set out in:

- the Proceeds of Crime (Jersey) Law 1999 as amended;
- the Terrorism (Jersey) Law 2002 as amended;
- the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 as amended;
- the Money Laundering (Jersey) Order 2008 as amended.
- the various laws that govern the formation and administration of financial services products<sup>1</sup> (the “Product Laws”).
- the AML/CFT Handbook and regulatory codes of practice, issued by the JFSC.

This consultation paper covers the implementation of the International Standards on AML/CFT as set out by the Financial Action Task Force (the “FATF”) – the international standard setter on financial crime.

Jersey has a long term policy of compliance with international standards in the area of AML/CFT and the Government remains absolutely committed to that policy in furtherance of the worldwide fight against financial crime.

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<sup>1</sup> Companies, Limited Partnerships, Limited Liability Partnerships, Separate Limited Partnerships, Incorporated Limited Partnerships, Foundations and Trusts

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It should be noted that this consultation does not deal with potential amendments to the AML/CFT framework that relate to European Union Directives/Regulations relevant to financial crime. Directives and Regulations of the European Union (the “EU”) are not automatically binding on Jersey. As a third country to the EU Jersey adopts a “good neighbour” policy, with European legislation adopted on a case-by-case basis. Adopting EU standards on financial crime can be important for market access to the EU and to ensure that the jurisdiction is not considered to be a “high risk third country” by the EU. Jersey will therefore consider its position in relation to the 4<sup>th</sup> and 5<sup>th</sup> anti-money laundering Directive of the European Union in due course and matters related to those Directives will not be considered in this consultation paper.

Consultation questions can be found in shaded boxes.

The JFCSG welcomes responses to this consultation electronically. Consultation responses can be submitted directly online at:

<https://www.surveymonkey.com/r/W7SBMR9>

Or alternatively, by e-mail to [cpresponses@jerseyfsc.org](mailto:cpresponses@jerseyfsc.org)

Enquiries concerning this consultation should be sent to [cpresponses@jerseyfsc.org](mailto:cpresponses@jerseyfsc.org)

**The closing date for submissions to the consultation is 30 September 2018.**

### **Jersey Financial Crime Strategy Group (the “JFCSG”)**

The JFCSG is comprised of key representatives from the Government of Jersey, it is Chaired by the Financial Services and Digital Economy Group and includes representatives of the External Relations Group, Department for Justice and Home Affairs and the Department for States Treasury and Exchequer. Additionally, the JFCSG includes representatives from the following key financial crime agencies the Law Officers' Department, Law Draftsman's Office, Jersey Financial Services Commission, States of Jersey Police, Customs and Immigration Service, Joint Financial Crimes Unit and the Jersey Gambling Commission.

The purpose of the JFCSG is to co-ordinate the actions of the island to mitigate the risk of financial crime. More information on the JFCSG can be found on the Government of Jersey's website<sup>2</sup>.

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<sup>2</sup> <https://www.gov.je/CrimeJustice/CrimePrevention/pages/financialcrime.aspx>

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### The 2012 FATF Recommendations

#### Background

In February 2012, the Financial Action Task Force (“FATF”) published its updated International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the “2012 Recommendations”).

The 2012 Recommendations are intended to specifically strengthen areas which FATF considers to be higher risk or where implementation should be enhanced. They have been expanded to deal with new threats such as the financing of proliferation of weapons of mass destruction, to be clearer on transparency and tougher on corruption.

They are also intended to be better targeted. The formal integration of the risk-based approach is intended to allow jurisdictions and financial institutions to apply their resources more efficiently by focusing on higher risk areas, while there is more flexibility for simplified measures to be applied in low risk areas.

Following analysis of the enhancements to the international AML/CFT standards, along with the accompanying Assessment Methodology, the JFCSG has identified potential legislative “gaps” in Jersey’s current AML/CFT Regime.

Some legislative amendments have already been made to the regime in Jersey, for example the Proceeds of Crime (Amendment No.3) (Jersey) Law 2018 was adopted by the States Assembly in July 2018 and the Counter-Terrorism and Security (Miscellaneous Amendments) (Jersey) Law 2017 came into force on 27 October 2017.

This consultation paper contains proposals for legislative amendments to plug the remaining gaps.

Proposals are listed in the order in which they relate to the 2012 Recommendations; and include a brief description of the new standard (with reference to the wording of the Recommendation itself, the interpretive note to the Recommendation, or the methodology for assessing compliance, as appropriate); and a comparison with the current legislative regime.

It should be noted that, in addition to legislative amendments, further (non-legislative) work will also be required to demonstrate compliance with certain Recommendations and to demonstrate effective implementation of all 40 Recommendations. Non-legislative work will be the subject of a separate consultation paper in due course.

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### Recommendation 1: assessing risks and applying a risk-based approach

#### Criterion 1.7

1. The FATF Assessment Methodology, at criterion 1.7, states that:  
*Where countries identify higher risks, they should ensure that their AML/CFT regime addresses such risks, including through: (a) requiring financial institutions and DNFBPs to take enhanced measures to manage and mitigate the risks; or (b) requiring financial institutions and DNFBPs to ensure that this information is incorporated into their risk assessments.*
2. There are 2 options outlined in this criterion. Both assume that the National Risk Assessment (the “NRA”) will identify specific products, services or scenarios that present a higher risk.
3. This criterion requires that Jersey either:
  - a) incorporate those specific products, services or scenarios into the enhanced due diligence regime – requiring relevant persons to apply enhanced measures; or
  - b) require relevant persons to take account of the NRA findings when undertaking their own risk assessments.
4. Currently, neither of these options are found in the Jersey AML/CFT regime, largely because Jersey has not previously undertaken an NRA.
5. Jersey authorities have recently commenced Jersey’s inaugural NRA, with an expected completion date of mid/late 2019.

#### Proposal

6. It is proposed that the Money Laundering (Jersey) Order 2008 (the “MLO”) will be amended so that relevant persons are required to consider the outcome of the NRA when performing their own risk assessments.

**Question 1. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

**Recommendation 4: Confiscation and provisional measures**

7. Recommendation 4 requires countries to have measures that enable the confiscation of (a) laundered property, (b) the proceeds or instrumentalities use or intended for use in money laundering or predicate offences, (c) property which is the proceeds of, or is used in or intended or allocated for use in, the financing of terrorism, terrorist acts or organisations, or (d) property of a corresponding value.
8. Criterion 4.2(c) provides that countries should have measures, including legislative measures that enable their competent authorities to take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation.
9. In Jersey's 4<sup>th</sup> round mutual evaluation by MONEYVAL<sup>3</sup>, concerns were raised regarding the ability of authorities to confiscate monies which were given to third parties as gifts, particularly those that were put into trust where the settlor retains a beneficial interest.
10. Under the Proceeds of Crime (Jersey) Law 1999 (the "POCL"), it is a defendant's "realisable property" which may be subject to a *saisie judiciaire* or a confiscation order under Part 2 of POCL (if the pre-requisite conditions are met and the Court orders either).  
"Realisable property" is defined in Article 2(1) of POCL to mean:
  - a) any property held by the defendant;
  - b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by Part 2; and
  - c) any property to which the defendant is beneficially entitled.According to Article 2(9) of POCL, a gift is caught by Part 2 if:
  - a) It was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
  - b) The Court considers it appropriate in all the circumstances to take the gift into account.
11. The MONEYVAL Evaluation Team noted its concerns regarding circumstances where the proceeds of crime and laundered property (etc) were no longer within the reach of the authorities and property of a

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corresponding value had been given away to a third party as a gift prior to the offending. It was noted at paragraph 308 of the MONEYVAL report that:

*“Nevertheless, assets contributed to a discretionary trust before the criminal conduct to which the external confiscation order relates, are not gifts within the definition in Article 2(9) of the Proceeds of Crime Law ... and a saisie judiciaire can of course only be applied to “realisable property”. This is subject to two caveats, (i) where a beneficiary has an entitlement to income or capital the gift will still be realisable property, and (ii) where he has made a transaction at an undervalue by making the gift into trust within 5 years before being declared bankrupt (en désastre) under the Bankruptcy (Désastre) (Jersey) Law 1990 then the gift can be set aside.”*

12. The report went on to criticise the inability of the authorities to attack property which the defendant had settled into a discretionary trust, of which he was one of the beneficiaries, prior to the offending. The report agreed that a beneficial interest in a discretionary trust should not, as such, automatically be considered realisable property but that nonetheless the Jersey authorities could consider that there might be circumstances where (e.g. by examination of the other evidence, such as the settlor’s letter of wishes) it may be appropriate to make inroads into the principles of trust law.
13. The JFCSG does not consider it appropriate to make inroads into fundamental principles of trust law by seeking to prescribe how much of the trust’s assets a discretionary beneficiary might theoretically be entitled to, and letters of wishes are not absolute which would make such an exercise in most cases practically very difficult.
14. It has however been decided that to mitigate against circumstances where a criminal has given away assets as gifts prior to his or her offending, a “clawback” provision should be inserted into the POCL (and the modified POCL for the enforcement of foreign confiscation orders (under the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 (the “Enforcement of Confiscation Orders Regulations”)). Such a clawback provision will have the same period for transactions at an

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<sup>3</sup> MONEYVAL is the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. It is a monitoring body of the Council of Europe, and assesses compliance with international AML/CFT standards.

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undervalue as in the Bankruptcy (Désastre) (Jersey) Law 1990 and the Companies (Jersey) Law 1991 (i.e. 5 years).

### Proposal

15. The proposal therefore is to amend Article 2(9) of POCL (and Article 2(9) POCL as amended by the Enforcement of Confiscation Orders Regulations) so that in addition to what is already caught by Part 2 of POCL, any gifts made within a period of **five years** ending with the criminal offence (or the earliest of the offences to which the proceedings relate) may also be caught by Part 2 of POCL if the court considers it appropriate in all the circumstances to take the gift into account.

**Question 2. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

**Question 3. Do you consider 5 years to be the appropriate period in which gifts made prior to criminal offending might be vulnerable?**

**Yes/No**

**If no, please explain:**



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### Recommendation 8: Non-profit organisations (“NPOs”)

16. This Recommendation requires countries to:
  - a) Identify the particular NPOs in the jurisdiction that may be vulnerable to terrorist financing abuse.
  - b) Review the adequacy of laws and regulations that relate to that subset of NPOs.
  - c) Apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse.
  
17. The Interpretive Note to Recommendation 8 expands on this requirement stating that:

*An effective approach should involve all four of the following elements:*

  - a) *sustained outreach,*
  - b) *targeted risk-based supervision or monitoring,*
  - c) *effective investigation and information gathering and*
  - d) *effective mechanisms for international cooperation.*
  
18. The Interpretive Note then goes on to state that targeted risk-based supervision or monitoring involves appropriate authorities monitoring the compliance of NPOs with the risk-based measures being applied to them and applying effective, proportionate and dissuasive sanctions for violations.
  
19. The measures themselves could include:
  - (i) *NPOs could be required to license or register.*
  - (ii) *NPOs could be required to maintain information on:*
    - (1) *the purpose and objectives of their stated activities; and*
    - (2) *the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information could be publicly available either directly from the NPO or through appropriate authorities.*
  - (iii) *NPOs could be required to issue annual financial statements.*
  - (iv) *NPOs could be required to have appropriate controls in place to ensure that all funds are fully accounted for*

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*(v) NPOs could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs.*

*(vi) NPOs could be required to take reasonable measures to document the identity of their significant donors.*

*(vi) NPOs could be required to maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been received and spent in a manner consistent with the purpose and objectives of the organisation. Where appropriate, records of charitable activities and financial operations by NPOs could also be made available to the public*

20. Currently, there are no such requirements on any NPOs in Jersey.

### Proposal

21. It is proposed that new legislation is introduced in order to impose obligations (such as those set out at paragraph 19 above) on a sub-sector of NPOs that may be vulnerable to terrorist financing abuse.

22. Such sub-sector will be identified as part of the National Risk Assessment programme and designated thereafter by ministerial Order.

23. We would welcome views as to which of the range of measures (as set out at paragraph 19 above) should be imposed on the subset of “vulnerable” NPOs.

**Question 4. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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**Question 5.** Which of the measures (as set out at paragraph 19 above) do you consider appropriate for application to a sub-sector of NPOs that may be vulnerable to terrorist financing abuse?

**Please explain your selection:**

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### Recommendation 10: Customer Due Diligence (“CDD”)

24. While the majority of the requirements under this Recommendation have not changed, there are a number of specific amendments required.

#### Criterion 10.4

25. The FATF Assessment Methodology, at criterion 10.4, states that *Financial institutions should be required to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person.*
26. Currently, the requirements in this regard only apply where the customer is not an individual.
27. The MLO currently states that:  
Article 3 Meaning of “customer due diligence measures”  
(2) Identification measures are measures for –  
(a)  
(b)  
(c) in respect of a customer that is not an individual –  
(i) identifying any person purporting to act on behalf of the customer and verifying the authority of any person purporting so to act,

#### Proposal

28. It is proposed that the MLO at Article 3 will be amended so that relevant persons are required to verify that any person purporting to act on behalf of any customer is so authorised, and identify and verify the identity of that person.

**Question 6. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Criterion 10.7(b)

29. The FATF Assessment Methodology, at criterion 10.7(b), states that:  
*Financial institutions should be required to conduct ongoing due diligence on the business relationship, including:*  
*(b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.*
30. Currently, the requirements in this regard do not include specific reference to “higher risk customers”.
31. The MLO states that:  
Article 3  
(3) On-going monitoring means –  
(a)  
(b) ensuring that documents, data or information obtained under identification measures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of the scrutiny described in sub-paragraph (a).

### Proposal

32. It is proposed that the MLO at Article 3(3)(b) will be amended so to include specific reference to higher risk customers, as set out in the sub-criterion.

**Question 7. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Criterion 10.14(c)

33. The FATF Assessment Methodology, at criterion 10.14(c) states that:  
*Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers; or (if permitted) may complete verification after the establishment of the business relationship, provided that:*
- a) ...
  - b) ...
  - c) *the ML/TF risks are effectively managed.*
34. Currently, the requirements in this regard include a condition that “there is little risk” – as opposed to the risks being managed.
35. The MLO states that:  
Article 13  
(4) Identification of a person that is described in Article 3(4)(b) may be completed as soon as reasonably practicable after the establishment of a business relationship if –
- (a) that is necessary not to interrupt the normal conduct of business; and
  - (b) there is little risk of money laundering occurring as a result of completing such identification after the establishment of that relationship.

### Proposal

36. It is proposed that the MLO at Article 13(4) will be amended so to include the specific terminology in the sub-criterion.

**Question 8. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Criterion 10.15

37. The FATF Assessment Methodology, at criterion 10.15 states that:  
*Financial institutions should be required to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.*
38. Currently, the requirements related to the policies and procedures required of a relevant person are set out in Article 11 of the MLO.
39. These do not include specific reference to the conditions under which a customer may delay verification.

### Proposal

40. It is proposed that the MLO at Article 11 will be amended so to include the specific requirement of this sub-criterion.

**Question 9. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

### Criterion 10.18

41. The FATF Assessment Methodology, at states that:  
*Financial institutions may only be permitted to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or the financial institution. The simplified measures should be commensurate with the lower risk factors, but are not acceptable whenever there is suspicion of ML/TF, or specific higher risk scenarios apply.*
42. Examples of Simplified Due Diligence measures given (in the Interpretive Note to Recommendation 10) are as follows:  
*Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship (e.g. if account transactions rise above a defined monetary threshold).*  
*Reducing the frequency of customer identification updates.*

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*Reducing the degree of on-going monitoring and scrutinising transactions, based on a reasonable monetary threshold.*

*Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.*

43. Currently, simplified measures under the Jersey regime may include:

**MLO Article 17:**

A relevant person need not find out the identity of, or obtain evidence of identity for, a third party (or parties), so long as certain conditions are complied with.

**MLO Article 18:**

Depending on the particular circumstances, a relevant person need not comply with:

- the obligation to identify a customer
- the obligation to identify a customer's beneficial owners and controllers
- the obligation to identify any person purporting to be authorised to act on behalf of a customer.

44. Such simplified measures can remove CDD obligations altogether and, despite being a common feature of many European jurisdictions' AML/CFT regimes, appear to go beyond what is contemplated by Recommendation 10.

45. In recent mutual evaluations, simplified measures such as those in the Jersey regime have been considered to be "exemptions" (i.e. removing an obligation altogether, as opposed to "simplifying" it) and considered under Recommendation 1.

46. Under Recommendation 1, such statutory exemptions are permitted, so long as they are justifiable on the basis of demonstrably low risk.

### Proposal

47. It is proposed that the MLO will be amended so as to remove the current simplified measures regime, as set out at Articles 17 and 18.



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48. The specific scenarios set out at Articles 17 and 18 will be re-introduced as statutory exemptions from CDD obligations, retaining the current conditions and exclusions.
49. The exception to this is the condition currently set out in Article 17(9A) of the MLO. This provides that, before applying simplified identification measures, a relevant person must consider the value and extent of each third party's financial interest in the product, arrangement, account or other investment vehicle offered to the customer by the relevant person; and, where the relevant person considers that the value or financial interest of the third party is significant, find out the identity of that person.
50. It is proposed to remove this condition from the statutory exemption that will replace Article 17 of the MLO.
51. As noted above, all statutory exemptions must be demonstrably lower risk. However, in advance of the NRA determining and/or demonstrating such low risk, all scenarios currently in Articles 17 and 18 will be "grandfathered" into the exemptions regime, and reviewed in 2019 in light of the results of the NRA.

**Question 10. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

#### **Criterion 10.20**

52. The FATF Assessment Methodology, at criterion 10.20 states that:  
*In cases where financial institutions form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file an STR.*
53. Currently, Article 14(6) of the MLO states that a relevant person need not apply identification measures where it has filed an STR and terminated the transaction or relationship.

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54. While this goes some way towards complying with the standard, it does not explicitly link the “carve-out” from CDD requirements to the belief that the CDD process will tip-off the customer.

#### Proposal

55. It is proposed that the MLO will be amended so to include this exemption from CDD obligations, as set out in the sub-criterion.

**Question 11. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Recommendation 11: Record-keeping

56. As with Recommendation 10, while the majority of the requirements under this Recommendation have not changed, two specific wording amendments are required.

#### Criterion 11.2

57. Financial institutions are required to keep all records obtained through CDD measures (e.g. copies or records of official identification documents like passports, identity cards, driving licences or similar documents), account files and business correspondence, **including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions)**, for at least five years after the business relationship is ended, or after the date of the occasional transaction.
58. The FATF Assessment Methodology, at criterion 11.2 states that:  
*Financial institutions should be required to keep all records obtained through CDD measures, account files and business correspondence, **and results of any analysis undertaken**, for at least five years following the termination of the business relationship or after the date of the occasional transaction.*
59. Currently, the Jersey regime includes a similar requirement, formulated as a code of practice at section 10.4.3 of the AML/CFT Handbooks. However, as a code of practice, it is not applicable to the full range of financial institutions and DNFBPs.

#### Proposal

60. It is proposed that the MLO at Article 19 will be amended so to include this requirement, as set out in the sub-criterion.

**Question 12.** Do you consider that the proposal is effective and proportionate?

Yes / No

If no, please explain:

#### Criterion 11.4

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61. The FATF Assessment Methodology, at criterion 11.4 states that:  
*Financial institutions should be required to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority.*
62. Currently, the Jersey regime does not include this specific requirement, rather requiring that records “can be made available on a timely basis...”.
63. The MLO does not define “timely basis”, but guidance provided in the AML/CFT Handbooks suggest that relevant persons should be able to access and retrieve relevant information “without undue delay”.
64. A code of practice provided in the AML/CFT Handbooks then specifies that records relating to evidence of identity, other CDD measures, and transactions must be accessible and retrievable **within 5 working days** and other records must be accessible and retrievable **within 10 working days**.
65. In recent mutual evaluations, wording such as “without undue delay”, “as soon as requested” and “without delay” were all considered to be compatible with Recommendation 11.

#### Proposal

66. It is proposed that the MLO at Article 19 will be amended so to include the wording as set out in the sub-criterion.
67. It is not anticipated that this will create any practical difference for relevant persons, but is rather made for the sake of clarity.

**Question 13. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Recommendation 12: Politically Exposed Persons (“PEPs”)

68. Although there are several specific amendments to wording and requirements, the main change to this Recommendation is that the definition of PEP has been expanded so as to include domestic as well as foreign PEPs and that these domestic PEPs must be subject to risk based enhanced measures.

#### Criterion 12.1(d)

69. The FATF Assessment Methodology, at criterion 12.1(d) states that in relation to foreign PEPs, financial institutions should be required to:
- a) *put in place risk management systems to determine whether a customer or the beneficial owner is a PEP;*
  - b) *obtain senior management approval before establishing (or continuing, for existing customers) such business relationships;*
  - c) *take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and*
  - d) *conduct enhanced ongoing monitoring on that relationship.*
70. Currently, the Jersey regime at MLO Article 15, does includes the specific measures listed at a), b), and c) above, but does not include that listed at d).

#### Proposal

71. It is proposed that the MLO at Article 15(5A) be amended so to include this requirement, as set out in the sub-criterion.

**Question 14. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Criterion 12.2

72. The FATF Assessment Methodology, at criterion 12.2 states that:
- In relation to domestic PEPs or persons who have been entrusted with a prominent function by an international organisation, in addition to performing the CDD measures required under Recommendation 10, financial institutions should be required to:*
- a) *take reasonable measures to determine whether a customer or the beneficial owner is such a person; and*
  - b) *in cases when there is higher risk business relationship with such a person, adopt the measures in criterion 12.1(b) to (d).*
73. The FATF Assessment Methodology, at criterion 12.3 states that such requirements should also apply to family members or close associates of all types of PEP.
74. Currently the Jersey regime does not contain any requirements in relation to domestic PEPs.
75. In addition, currently the Jersey regime treats persons who have been entrusted with a prominent function by an international organisation in the same manner as overseas PEPs.

### Proposal

76. It is proposed that the MLO at Article 15 be amended so to include this requirement in relation to domestic PEPs, their family members or associates, and to persons who have been entrusted with a prominent function by an international organisation, as set out in the sub-criterion.

**Question 15. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

77. It should be noted that, while enhanced measures must be mandatory in relation to a foreign PEP, these measures are only required to apply to domestic PEPs and persons who have been entrusted with a prominent

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function by an international organisation “in cases when there is higher risk business relationship with such a person”.

78. This means that guidance will be needed to assist industry in determining when to apply the enhanced measures to domestic PEPs and persons who have been entrusted with a prominent function by an international organisation.
79. Such guidance will be included in the Jersey Financial Services Commission’s AML/CFT Handbooks and will be the subject of a separate consultation at a later date. At this point, it would be useful to have views as to the most useful form such guidance could take.

**Question 16. Do you consider that guidance in relation to determination of “higher risk” domestic PEPs and persons who have been entrusted with a prominent function by an international organisation would be more useful as:**

- a) a list of domestic positions/roles that are such that the business relationship is always to be considered higher risk; or**
- b) a list of features/risk elements, to assist relevant person in determining whether the business relationship is higher risk?**

**Please explain your selection:**

### **Criterion 12.4**

80. The FATF Assessment Methodology, at criterion 12.4, sets some very specific requirements in relation to PEPs and life insurance policies.

*In relation to life insurance policies, financial institutions should be required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout. Where higher risks are identified, financial institutions should be required to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.*

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81. Currently, the requirement in the Jersey regime do not contain this level of specificity. The Jersey regime does not contain the obligations to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.

#### **Proposal**

82. It is proposed that the MLO at Article 15 be amended so to include this requirement in relation to PEPs and life insurance policies, as set out in the sub-criterion.

**Question 17. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**



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## Jersey Financial Crime Strategy Group

### Recommendation 13: Correspondent Banking

#### Criterion 13.1(d)

83. The FATF Assessment Methodology, at criterion 13.1(d) states that specified measures should be applied:

*In relation to cross-border correspondent banking and other similar relationships, financial institutions should be required to:*

*(d) clearly understand the respective AML/CFT responsibilities of each institution*

84. The Interpretive Note to the Recommendation then states that:  
*“The similar relationships... include, for example those established for securities transactions or funds transfers, whether for the cross-border financial institution as principal or for its customers...”*
85. Currently, the correspondent banking requirements in the MLO at Article 15(4) to (4B) apply to correspondent banking, but not to “other similar relationships”.

#### Proposal

86. It is proposed that the MLO at Article 15 be amended so to extend the obligations to include “similar relationships” as well as correspondent banking.

**Question 18. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

87. We would be interested in views as to whether guidance on the meaning of the term “similar relationships” would be useful and, if so, whether such guidance should follow the definition in the Interpretive Note as set out at paragraph 84 above.

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## Jersey Financial Crime Strategy Group

**Question 19.** Do you consider that whether guidance on the meaning of the term “similar relationships” would be useful?

Yes / No

If no, please explain:

If yes, do you consider that such guidance should follow the definition in the Interpretive Note as set out at para 84 above:

88. Currently, the correspondent banking requirements in the MLO at Article 15(4) to (4B) require financial institutions to record the respective AML/CFT responsibilities.

### Proposal

89. It is proposed that the MLO at Article 15 be amended so to include the obligation to “clearly understand the respective AML/CFT responsibilities of each institution”.

**Question 20.** Do you consider that the proposal is effective and proportionate?

Yes / No

If no, please explain:

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## Jersey Financial Crime Strategy Group

### Recommendation 14: Money or Value Transfer Services (“MVTs”)

#### Criterion 14.1

90. The FATF Assessment Methodology, at criterion 14.1 states that:  
*Natural or legal persons that provide MVTs (MVTs providers) should be required to be licensed or registered.*
91. The new definition of “MVTs” no longer refers to the banking system and, instead, includes a reference to “new payment methods,” reflecting this emerging potential AML/CFT risk.  
*Money or value transfer services (MVTs) refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTs provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party, and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including hawala, hundi, and fei-chen.*
92. Currently the Jersey regime defines money service business (“MSB”) in the Financial Services (Jersey) Law 1998 as follows:
93. Article 2  
(9) A person carries on money service business if the person carries on the business of any of the following –
- a) a bureau de change;
  - b) providing cheque cashing services;
  - c) transmitting or receiving funds by wire or other electronic means;
  - d) engaging in money transmission services.
94. It is arguable that the combination of c) and d) above may be sufficient to demonstrate compliance with this criterion.

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### Proposal

95. For the sake of clarity, it is proposed that the statutory definition of MSB be amended so to include the new definition of MVTs, as set out in the sub-criterion.

**Question 21. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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## Jersey Financial Crime Strategy Group

### Recommendation 15: New Technologies

#### Criterion 15.2

96. The FATF Assessment Methodology, at criterion 15.2 states that:  
*Financial institutions should be required to:*
- a) *undertake the risk assessments prior to the launch or use of such products, practices and technologies; and*
  - b) *take appropriate measures to manage and mitigate the risks.*
97. Currently the Jersey regime at MLO Article 11 states that a relevant person must maintain appropriate and consistent policies and procedures including:
- (3)(ba) the identification and assessment of risks that may arise in relation to the development of new products, services or practices, including new delivery mechanisms;
  - (bb) the identification and assessment of risks that may arise in relation to the use of new or developing technologies for new or existing products or services;
98. Article 11 does not specify when the assessment must be conducted and does not specify that appropriate measures must be taken to mitigate the identified risks.

#### Proposal

99. It is proposed that the MLO at Article 11(3) be amended so to include the specific wording, as set out in the sub-criterion.

**Question 22. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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## Jersey Financial Crime Strategy Group

### Recommendation 17: Reliance on Third Parties

#### Criterion 17.3

100. The FATF Assessment Methodology, at criterion 17.3 states that:
- For financial institutions that rely on a third party that is part of the same financial group, relevant competent authorities may also consider that the requirements of the criteria above are met in the following circumstances:*
- a) *the group applies CDD and record-keeping requirements, in line with Recommendations 10 to 12, and programmes against money laundering and terrorist financing, in accordance with Recommendation 18;*
  - b) *the implementation of those CDD and record-keeping requirements and AML/CFT programmes is supervised at a group level by a competent authority; and*
  - c) *any higher country risk is adequately mitigated by the group's AML/CFT policies.*
101. Currently the Jersey regime at MLO at Article 16A states that a relevant person may rely on a person outside Jersey who is not an obliged person ('other person') to apply similar identification measures to those specified in Article 3(2)(a), (b) and (c) that satisfy Recommendation 5 of the FATF Recommendations if –
- a) that other person is a member of the same financial group as the relevant person;
  - b) that other person carries on a business which, if that business were carried on in Jersey, would be a financial services business;
  - c) the financial group applies the customer due diligence measures and record keeping requirements required under this Order or in Recommendations 5, 6 and 10 of the FATF Recommendations;
  - d) the financial group to which the relevant person and the other person belong maintains a programme against money laundering which includes policies and procedures by which every member of the financial group who carries on financial services business or equivalent business shares information that is appropriate for the purpose of preventing and detecting money laundering;
  - e) the implementation of customer due diligence and record keeping requirements, and of the programme referred to in sub-paragraph (d), are supervised by an overseas regulatory authority; and

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f) the conditions that must be complied with for a relevant person to rely upon a person under Article 16(1) (including the requirements described in Article 16(4) and 16(5)) are satisfied.

102. The regime therefore includes the conditions specified in the criteria 17.3(a) and (b), but not the condition at criterion 17.3(c).

#### **Proposal**

103. It is proposed that the MLO at Article 16 be amended so to include the specific wording, as set out in the sub-criterion 17.3(c) – the specific condition that “any higher country risk is adequately mitigated by the group’s AML/CFT policies”.

**Question 23. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Recommendation 18: Internal Controls and Foreign Branches and Subsidiaries

#### Criterion 18.2

104. The FATF Assessment Methodology, at criterion 18.2 states that:
- Financial groups should be required to implement group-wide programmes against ML/TF, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. These should include the measures set out in criterion 18.1 and also:*
- a) *policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management;*
  - b) *the provision, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes; and*
  - c) *adequate safeguards on the confidentiality and use of information exchanged.*
105. Currently the Jersey regime, namely the MLO at Article 11, states:
- (1) A relevant person must maintain appropriate and consistent policies and procedures relating to –
- (a) customer due diligence measures;
  - (b) reporting in accordance with the provisions in the Law and the Terrorism Law mentioned in Article 21(6);
  - (c) record-keeping;
  - (d) screening of employees;
  - (e) internal control;
  - (f) risk assessment and management; and
  - (g) the monitoring and management of compliance with, and the internal communication of, such policies and procedures,
- in respect of that person’s financial services business carried on in Jersey or elsewhere, or a financial services business carried on in Jersey or elsewhere by a subsidiary of that person, in order to prevent and detect money laundering;
- ...



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(8) A relevant person with any subsidiary or branch that carries on a financial services business must communicate to that subsidiary or branch that person's policies and procedures for complying with paragraph (1)

106. These requirements do not contain reference to the sharing of information amongst the group.

### Proposal

107. It is proposed that the MLO at Article 11 be amended so as to clearly include the requirements in relation to group policies and particularly information sharing, as set out in sub-criterion 18.2.

**Question 24. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

### Criterion 18.3

108. The FATF Assessment Methodology, at criterion 18.3 states that:

*If the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, financial groups should be required to apply appropriate additional measures to manage the ML/TF risks, and inform their home supervisors.*

109. Currently the Jersey regime does not include this specific requirement.

### Proposal

110. It is proposed that the MLO at Article 11 be amended to include this requirement, as set out in sub-criterion 18.3.

**Question 25. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### **Recommendation 22: Designated Non-Financial Businesses and Professions (“DNFBPs”) and Customer Due Diligence**

- 111. In the main, the new requirements under this Recommendation mirror those imposed on financial institutions under Recommendation 10.
- 112. In Jersey, the CDD obligations on FIs and DNFBPs are the same, so that the proposals set out at Recommendation 10 will automatically apply to DNFBPs under this Recommendation.
- 113. There are, however, several DNFBP-specific actions required.

#### **Criterion 22.1(a)**

- 114. The FATF Assessment Methodology, at criterion 22.1(a) concerns the application of CDD by Casinos to its customers and the footnote to this criterion states that:

*Conducting customer identification at the entry to a casino could be, but is not necessarily, sufficient. Countries must require casinos to ensure that they are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino.*

- 115. Currently there is no requirement in the Jersey regime that Casinos “ensure that they are able to link [CDD] information for a particular customer to the transactions that the customer conducts in the casino.”

#### **Proposal**

- 116. It is proposed that the requirement set out in the footnote to sub-criterion 22.1(a) be introduced to the Jersey AML/CFT regime, in relation to land-based Casinos.
- 117. As there is currently no AML/CFT Handbook specifically for Casinos, such requirement is proposed to be introduced to the MLO – potentially at Article 11.

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**Question 26. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

### **Criterion 22.1(b)**

118. The FATF Assessment Methodology, at criterion 22.1(b) concerns the application of CDD by Real Estate Agents to its customers and states that:

*(b) Real estate agents – when they are involved in transactions for a client concerning the buying and selling of real estate.*

119. The footnote to this criterion then states that:

*This means that real estate agents should comply with the requirements set out in Recommendation 10 with respect to both the purchasers and the vendors of the property.*

120. It is increasingly becoming clear that this requirement is being interpreted as placing an obligation on a real estate agent to apply CDD measures to both parties to any real estate transaction in which they are involved.

121. Currently there is no requirement in the Jersey regime that real estate agents apply CDD measures to both parties to a real estate transaction.

### **Proposal**

122. It is proposed that the requirement as explained in the footnote to sub-criterion 22.1(b) be introduced to the Jersey AML/CT regime.

**Question 27. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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123. This could be achieved either by amending the MLO or by including the requirement as a code of practice in the Real Estate Agents' AML/CFT Handbook.

**Question 28.** Do you consider that the most appropriate and effective method of introducing such a requirement is by:

- a) amending the MLO; or
- B) including the footnote as a code of practice in the Real Estate Agents' AML/CFT Handbook?

**Please explain your selection:**

**Recommendation 24: Transparency of Legal Persons**

124. Recommendation 24 of the FATF Recommendations deals with the requirement of countries to prevent the misuse of legal persons for money laundering or terrorist financing. Jersey has been recognised as having a “leading position” in the area of beneficial ownership – however this was based upon assessment against the previous 2003 FATF Recommendations.
125. Since 2003, the FATF Recommendations have been further developed in order to take into account developments in the areas of transparency of legal persons.
126. The position in Jersey, has, however been further enhanced by a consultation that occurred in 2016 on Beneficial Ownership of Jersey Companies and a Register of Directors<sup>4</sup> where a number of amendments were made to deal with information obtained on legal persons being “adequate” and “current”.
127. However, there remain a number of elements of legislation that will still require amendment to fully implement the 2012 FATF Recommendations. Recommendation 24 covers all legal persons which predominantly focusses on companies, partnerships and foundations – all of which are incorporated/registered with the Companies Registry. However, there are other types of legal persons relevant to the Recommendation such as Incorporated Associations and the same principles will need to be applied.

**Basic Information**

128. In respect of Basic information – the requirements of criterion 24.3 of the Recommendations require basic information to be made publicly available. In October 2016, in a published policy paper, Jersey took the decision to create a central Register of Directors but that this Register would not be public at the current point in time. However, to achieve full compliance with criterion 24.3 all forms of basic information should be publicly available.

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<https://www.gov.je/government/consultations/pages/beneficialownershipofjerseycompaniesandaregisterofdirectors.aspx>

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129. The authorities are in the process of developing a Draft Registry (Jersey) Law 201-, which will ensure that the jurisdiction complies with criterion 24.3, 24.4 and 24.5.
130. In respect of criterion 24.3, there may be considered a gap in respect of the information available on the basic regulating powers for Foundations. In order to address this gap in full, the Foundations Rules (or parts thereof) would have to be filed with the Companies Registry and should be publicly available.

#### Proposal

131. It is proposed that that the Foundations Rules (or parts thereof) would have to be filed with the Companies Registry and should be publicly available.

**Question 29. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**Please explain your answer:**

132. The current intention of the authorities is that either the legislation should be structured to allow the Minister to determine, by Order, how any of the Registers should be held – which would allow for Registers to be held privately or publicly - this would therefore allow flexibility for the future. However, those responding to the consultation should consider the advantages and disadvantages of making this information publicly available at the current point in time.
133. It is important to note that criterion 24.5 requires countries to have mechanisms to ensure that the information referred to in criterion 24.3 and 24.4 should be updated on a timely basis. It is intended that the Draft Registry (Jersey) Law 201- be utilised to ensure an element of standardisation in respect of updating of basic ownership information across all legal persons.

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134. The jurisdiction has previously taken the position in respect of beneficial ownership and the Register of Directors that updating should occur within 21 days of becoming aware of a change of information. Equally, whilst the standard has not been further developed to define exactly what period would be appropriate to ensure data is accurate, the period of 21 days does seem appropriate based on current discussions concerning countries mutual evaluation reports. The authorities would therefore propose implementing a period of 21 days for updating basic information provided to the Companies Registry.

#### Proposal

135. It is proposed that a central Register of Directors be created in line with that proposed in the previous consultation paper entitled Beneficial Ownership of Jersey Companies and a Register of Directors<sup>5</sup>

**Question 30. Should the information on the Register of Directors be made publicly available?**

**Yes / No**

**If no, please explain:**

#### Proposal

136. Criterion 24.5 requires basic information to be updated on a timely basis. The authorities consider that basic information held at the Companies Registry should be updated within 21 days of becoming aware of a change of basic information.

**Question 31. Do you consider that the proposal is effective and proportionate?**

**Please explain your selection:**

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<https://www.gov.je/government/consultations/pages/beneficialownershipofjerseycompaniesandaregisterofdirectors.aspx>

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### Beneficial Ownership Information

137. In respect of criterion 24.6 to 24.9 which covers Beneficial Ownership information, Jersey currently complies with the vast majority of requirements through the application of the Control of Borrowing (Jersey) Order 1958 (the “COBO”) regime. However, the intention of the authorities is for COBO to be retired (in the main) and replaced by a regime which consolidates basic information requirements, beneficial ownership requirements and retention of records into one single law being the Draft Registry (Jersey) Law 201-.
138. However, a number of provisions will need to be updated from the current regime in order to fully implement the 2012 FATF Recommendations.
139. Criterion 24.8 states that *countries should ensure that companies co-operate with authorities to the fullest extent possible in determining the beneficial owner, by :*
- “(a) requiring that one or more natural persons resident in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities; and/or*
- (b) requiring that a DNFBP in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities.; and/or*
- (c) taking other comparable measures specifically identified by the country.”*

### Proposal

140. It is proposed that the authorities would intend to introduce an explicit requirement in the draft Registry (Jersey) Law 201- to require legal entities to require either a natural person or a licensed and regulated TCSP in Jersey to be responsible as per the criterion. The natural person or licensed and regulated TCSP will be provided will all necessary cooperation requirements to provide information. It is intended that the name of the natural person or a licensed and regulated TCSP is held by the Companies Registry.



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**Question 32. Do you consider that the proposal is effective and proportionate?**

**Yes/No**

**Please explain your selection:**

141. In respect of Criterion 24.9 there is a general requirement “that records in relation to beneficial ownership must be kept for at least 5 years – and importantly this also applies to the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company).” The same requirement would apply to the natural person or TCSP referred to in relation to Criterion 24.8. The relevant date for retaining the records is for at least five years after the date on which the company is dissolved and or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution. It is intended that the Draft Registry (Jersey) Law 201- be utilised to implement the record keeping requirement in full.

### **Other Requirements**

142. Criterion 24.10 makes it clear that competent authorities and in particular law enforcement authorities should have all the powers necessary to obtain timely access to the basic and beneficial ownership information held by the relevant parties. Whilst in respect of direct law enforcement (the Joint Financial Crime Unit of the States of Jersey Police), the enhancement of the beneficial ownership regime in 2016 resulted in the installation of direct access to the Register; the authorities in Jersey will further consider the legislative framework for information exchange between authorities. This is notably the case with information exchange with the tax authority to ensure they will also have timely access to basic and beneficial ownership information. This will be progressed in line with other legislative amendments.

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143. In respect of criterion 24.11 –there are requirements to prevent the misuse of bearer shares or bearer share warrants. Whereas previously Jersey has taken the position of requiring bearer shares and warrants to be registered, the authorities are now of the view that this position should be put beyond doubt. Given the very limited amount of bearer shares (which still are required to be registered) left in existence in Jersey, it is intended that amendments are made to legislation to prohibit bearer shares in Jersey.

#### Proposal

144. It is proposed that the authorities would intend to introduce an explicit requirement in legislation to prohibit bearer shares in Jersey.

**Question 33. Do you consider that the proposal is effective and proportionate?**

**Yes/No**

**Please explain your selection:**

145. The 2012 FATF Recommendations provide a number of options to control situations where there is the ability to nominate shareholders or directors.

A country must, however, apply one of the following mechanisms to prevent against misuse:

*“(a) requiring nominee shareholders and directors to disclose the identity of their nominator to the company and to any relevant registry; and for this information to be included in the relevant register;*

*(b) requiring nominee shareholders and directors to be licensed, for their nominee status to be recorded in company registries, and for them to maintain information identifying their nominator, and make this information available to competent authorities upon request;”*

146. Jersey could take a position whereby it chose to limit the approach to simply licensing nominee shareholders – however, this would have the effect of limiting the population of those eligible to be nominated to the local regulated financial services community. This may be deemed too restrictive and therefore an optional approach may be favoured.

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147. Respondents are asked to consider if they would favour an approach where either a nominee can be licensed or, alternatively (if not licensed) that nominees have to notify the Companies Registry of the identity of their nominator and for that information to be included on the register.

#### Proposal

148. Respondents are asked to consider whether Jersey should adopt a regime where only nominee shareholders and directors are permitted if they are licensed and regulated in Jersey (Option A), licensed and regulated in another equivalent jurisdiction (Option B) or alternatively that nominees must notify the company and the Companies Registry of the identity of any nominator (irrespective of material interest in the company) and for that information to be included on the register (Option C). Information provided to the companies register under Option C could be held either publicly or privately and respondents are asked to consider this position.

**Question 34. Do you consider that in respect of nominee shareholders and directors Jersey should adopt the policy position outlined at Option A, Option B or Option C above?**

**Option A / Option B / Option C**

**Please explain your selection:**

149. The view has been taken that Jersey companies law does not recognise the concept of nominee directors, in order to put this position beyond doubt, it is proposed that the Companies (Jersey) Law 1991 is amended to explicitly prohibit the concept of nominee Directors.

**Question 35. Do you consider that nominee Directors should be explicitly prohibited by amendment to the Companies (Jersey) Law 1999?**

**Yes/No**

**Please explain your answer:**

150. In respect of criterion 24.15, there is a requirement in the international standards to ensure that Jersey authorities monitor the quality of assistance received from other countries in response to requests for basic or beneficial

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ownership information or requests for assistance in locating beneficial owners residing abroad. The work being conducted through the JFCSG and through the Financial Crime Enforcement Government Oversight Group (“FCE-GOG”) will look to ensure this is monitored and can be reported in the future to identify any issues.

**Recommendation 25: Transparency of Legal Arrangements**

151. The vast majority of FATF Recommendation 25 has been complied with by virtue of the longstanding TCSP regulatory regime that Jersey has in place. Equally, in respect of criterion 25.1(a) amendments were made post the MONEYVAL review of Jersey in 2015 to ensure that trustees of all express trusts were required to hold the required information under that part of the Recommendations. That amendment was made by an amendment to Schedule 2 to the POCL to include anyone acting as a trustee of an express trust. However, there are a number of parts which require amendment to tighten up provisions in order to comply with the FATF Recommendations that have developed since the 2003 Recommendations on which Jersey was last evaluated by MONEYVAL.
152. It is important to note that the international standard has been clarified through Recommendation 25 which confirms that the provisions must apply to any express trust governed under the law of Jersey. Therefore, in addition to the specific proposals made in this consultation paper, the authorities will review the application of the existing regime – with a particular focus on non-resident trustees of Jersey trusts.
153. In respect of criterion 25.1(b) there is no explicit requirement in legislation to require trustees to hold basic information on regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors. Whilst in respect of the regulated community of trustees, this type of record keeping would likely be imposed by regulatory requirements under current practice, this does not require all trustees to do this and therefore falls short of the standard.

**Proposal**

154. The authorities would propose to either amend the Trusts (Jersey) Law 1984 (the “TJL”) and associated regulatory codes of Practice to introduce this requirement or place similar provisions in the POCL and/or subordinate legislation imposing this requirement in respect of 25.1(b).

**Question 36. Do you consider that the proposal is effective and proportionate?**

**Yes/No**

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**Question 37. If yes to question 36, should the amendments be included in the TJL or the POCL?**

**TJL amendments / POCL amendments**

**Please explain your selections:**

155. In respect of the retention period for records in criterion 25.1(c) and 25.2 as this relates to professional trustees, this will need to be ensured by the application of the regulatory codes of practice. Whilst it is the case that the authorities believe the codes of practice already have this effect, this will be reviewed in line with this consultation exercise.
156. In respect of criterion 25.3 the FATF Recommendations require that countries ensure that trustees disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold. Whilst it is the understanding of the authorities that in practice, due to liability issues, this is currently done by trustees, there is no explicit requirement in legislation requiring the trustee to do this.

### **Proposal**

157. The authorities would propose to either amend the TJL and associated regulatory codes of practice to introduce this requirement or place similar provisions in the POCL imposing this requirement.

**Question 38. Do you consider that the proposal is effective and proportionate?**

**Yes/No**

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**Question 39. If yes to question 38, should the amendments be included in the TJL or the POCL?**

**TJL amendments/ POCL amendments**

**Please explain your selection:**

158. Criterion 25.4 requires that “Trustees should not be prevented by law or enforceable means from providing competent authorities with any information relating to the trusts, or from providing financial institutions and DNFBPs, upon request, with information on the beneficial ownership and the assets of the trust to be held or managed under the terms of the business relationship”.
159. The authorities intend to give further consideration to whether amendments are required to either the TJL or the POCL to give effect to this part of the Recommendations.

### **Proposal**

160. Respondents are encouraged to consider whether they think that amendments are required to either the TJL or the POCL to ensure that trustees are not be prevented by law or enforceable means from providing competent authorities with any information relating to the trusts. Equally that trustees are not prevented from providing financial institutions and DNFBPs, upon request, with information on the beneficial ownership and the assets of the trust to be held or managed under the terms of the business relationship.

**Question 40. Do you consider that amendments are required to the TJL or the POCL to give effect to Criterion 25.4?**

**Yes/No**

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**Question 41. If yes to question 38, should the amendments be included in the TJL or the POCL?**

**TJL amendments/ POCL amendments**

**Please explain your selection:**

161. The authorities are conscious of the liability and penalty requirements raised in criterion 25.7 and criterion 25.8 and in line with the requirements being reviewed elsewhere in Recommendation 25 will ensure that there is appropriate liability and penalties in place to comply with the Recommendation.



**Recommendation 26: Regulation and Supervision of Financial Institutions**

162. One of the key changes from the 2003 Recommendations is the formal integration of the concept of a “risk-based approach” into all aspects of the AML/CFT regime. This is very clear in the Recommendations relating to supervision, particularly when viewed alongside the Interpretive Notes and the Methodology.

**Criterion 26.5**

163. The FATF Assessment Methodology, at criterion 26.5, states that:  
*The frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions or groups should be determined on the basis of:*

- a) *the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisor’s assessment of the institution’s or group’s risk profile;*
- b) *the ML/TF risks present in the country; and*
- c) *the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach.*

**Criterion 26.6**

164. The FATF Assessment Methodology, at criterion 26.6, states that  
*The supervisor should review the assessment of the ML/TF risk profile of a financial institution or group (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution or group.*

165. Currently the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, at Article 2, defines “supervisory functions” as follows:

“Supervisory functions” shall mean any of the following –

- (a) monitoring compliance by a supervised person with any of the following–
  - (i) any requirement to which that person is subject under this Law,
  - (ii) any Order under Article 37 of the Proceeds of Crime (Jersey) Law 1999,

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- (iii) the Community Provisions (Wire Transfers) (Jersey) Regulations 2007,
  - (iv) any direction under Article 6 of the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012,
  - (v) any code of practice that applies to that person or the supervised business carried on by that person;
- (b) carrying out the functions, powers and duties conferred under this Law for the purpose of compliance by a supervised person with the things described in sub-paragraph (a)
166. The statutory function of an AML/CFT supervisor in Jersey contains no direct reference to the risk-based approach or to risk-based supervision.
167. “Supervisory functions” in relation to AML/CFT are currently defined as “monitoring compliance by a supervised person...” This terminology is based on the previous (2003) FATF Recommendations.

#### Proposal

168. Examples from other jurisdictions indicate that the statutory function of an AML/CFT supervisor is increasingly being defined using the terminology of sub-criteria referred to above, in order to demonstrate technical compliance with the international standard.
169. For example, the UK Money Laundering Regulations 2017, which were introduced as a result of the review of its regime against the 2012 FATF Recommendations, state that:
- *the supervisor must develop and record a ML/TF risk profile for each relevant person (reg 17(4))*
  - *the supervisor must regularly review the risk profiles, plus at significant events (reg 17(8))*
  - *the supervisor must effectively monitor relevant persons... for the purpose of securing compliance... (reg 46(1))*
  - *the supervisor must “base the frequency and intensity of its on-site and off-site supervision on the risk profiles prepared under regulation 17(4)” (reg 46(2))*
  - *the supervisor must take account of the degree of discretion permitted to relevant persons (reg 46(3))*

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170. It is proposed that the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 be amended so that the function of an AML/CFT supervisor is clearly defined to include the concepts and terminology in the sub-criteria set out above, clearly incorporating the risk-based approach.

**Question 42. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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### Recommendation 28: Regulation and Supervision of DNFBPs

#### Criterion 28.4

171. The FATF Assessment Methodology, at criterion 28.4 (in relation to DNFBPs) states that:

*The designated competent authority or self-regulatory body (“SRB”) should: (b) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFBP;...*

172. This is a new requirement in the 2012 Recommendations so does not currently appear in the Jersey regime.

#### Proposal

173. It is proposed that the requirements set out in sub-criteria 28.4(b) be introduced to the Jersey AML/CFT regime.
174. Currently, provisions prevent criminals from owning or controlling some financial institutions and trust and company service providers (via the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and the Financial Services (Jersey) Law 1998 respectively).
175. It is proposed that the former of these laws be amended so as to incorporate a similar criminality test in relation to all other DNFBPs.
176. Once the new requirement is in place, further consultation will be undertaken in relation to the application of the new criminality test. This will seek views on potential methods of complying with the new requirement (for example self-certification; provision of personal police checks; or checks to be undertaken by the JFSC.)

**Question 43. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

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177. It should be noted that the requirement is not a full “fit and proper” test, but rather a “criminality” test. It is proposed that the test be limited to convictions that are relevant to the risk of money laundering or terrorist financing (e.g. money laundering, terrorist financing, perverting the course of justice, counterfeiting, fraud, terrorism, robbery, bribery, corruption, etc.).

**Question 44. Do you consider that the proposal is effective and proportionate?**

**Yes / No**

**If no, please explain:**

178. It is proposed that the criminality test will be applied to existing DNFBPs as well as new applicants. This will require a “transition period” in order to bring existing DNFBPs into compliance with the new requirement.

**Question 45. Do you consider that the proposal to apply the criminality test to existing DNFBPs is effective and proportionate?**

**Yes / No**

**If no, please explain:**

**If yes, what do you consider would be a reasonable “transition period”?**

#### **Criterion 28.5**

179. The FATF Assessment Methodology, at criterion 28.5 states that:  
*Supervision of DNFBPs should be performed on a risk-sensitive basis, including:*
- a) *determining the frequency and intensity of AML/CFT supervision of DNFBPs on the basis of their understanding of the ML/TF risks, taking into consideration the characteristics of the DNFBPs, in particular their diversity and number; and*

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- b) *taking into account the ML/TF risk profile of those DNFBPs, and the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.*
180. The Jersey AML/CFT supervisory regime applies equally to both financial institutions and DNFBPs. The current position and policy proposals set out in relation to AML/CFT supervision under Recommendation 26 above will also have the effect of ensuring compliance with Recommendation 28.

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### **Recommendation 29: Financial Intelligence Units**

181. Recommendation 29 will require a number of amendments to be made to the way in which the Financial Intelligence Unit in Jersey (the “FIU”) is structured and matters concerning its independence and autonomy to take actions.
182. As matters related to the FIU are domestic policy affecting only jurisdictional authorities, it is not proposed that these changes will form part of this consultation.

**[END OF DOCUMENT]**