



# Consultation regarding amendments to the Money Laundering (Jersey) Order 2008

# CONSULTATION REGARDING AMENDMENTS TO THE MONEY LAUNDERING (JERSEY) ORDER 2008

## SUMMARY

In order to better align the legislative anti-money laundering (AML) and countering the financing of terrorism (CFT) regime with the terminology and requirements under international AML/CFT standards and international best practices, the Government of Jersey is proposing to make a number of amendments to the [Money Laundering \(Jersey\) Order 2008](#) (the “MLO”). The proposed amendments either look to align, clarify, or expand existing provisions in the MLO. Inter alia, it is proposed that the existing additional obligations imposed on financial groups regarding group-wide policies and procedures also apply to groups of designated non-financial businesses and professions. Finally, the insertion of new provisions is proposed in order to enable the declassification of Politically Exposed Persons, after a certain period and subject to the application of a risk-based approach.

**THIS CONSULTATION NOW SEEKS VIEWS ON THE DRAFT AMENDMENTS.**

**Date published:** 12 May 2023

**Closing date:** 9 June 2023

**Supporting document attached:**

- Draft Money Laundering (Amendment No. 12) (Jersey) Order 202-
- Draft Money Laundering (Amendment No. 12) (Jersey) Order 202- Explanatory Note

**Ways to respond:**

**Dr Bastian Hertstein**

Associate Director Financial Crime Strategy

Economy | Government of Jersey

19 - 21 Broad Street | St Helier | Jersey | JE2 3RR

Email: [B.Hertstein@gov.je](mailto:B.Hertstein@gov.je)

## INTRODUCTION

The Government of Jersey's efforts to combat financial crime and illicit finance are based on the standards developed by the Financial Action Task Force (FATF). The FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society.

The FATF has developed and revised 40 [Recommendations](#) (the "**Recommendations**"), which ensure a co-ordinated global response to prevent organised crime, corruption, and terrorism. Jersey is currently undergoing an assessment by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) regarding its compliance against the Recommendations and the effectiveness of their implementation with an onsite visit by MONEYVAL scheduled for September 2023.

Upon further review, the Jersey Financial Services Commission (JFSC), in co-operation with Government, has identified the need to clarify or expand certain provisions of the MLO in order to achieve a closer alignment with the Recommendations.

Separately, Government acknowledges that currently most other jurisdictions provide the possibility for PEP declassification under certain circumstances. Thus, to better align the local regime with this international best practice, Government proposes to enable the declassification of Politically Exposed Persons (PEPs) after certain periods and subject to the application of a risk-based approach.

## PROPOSALS

1. Article 1 of the MLO contains definitions of several terms and phrases, including the following:

"FATF recommendations" means the FATF Recommendations adopted on 16th February 2012 and as amended up to the date of the making of this Order;"

This construction could potentially cause confusion, specifically the reference to the date of the making of "this Order". Thus, it is proposed to amend the definition of "FATF recommendations", and substitute "up to the date of the making of this Order" with "or replaced from time to time".

2. Article 3 (meaning of "customer due diligence measures") is amended to clarify that a "digital identification system that complies with the FATF Guidance on Digital Identity published on 6th March 2020 as amended or replaced from time to time constitutes a reliable and independent source."
3. Article 4 (meaning of "one-off transaction") is amended to update references to "a money service business" to the broader "money or value transfer services" (which includes a money service business) within the meaning of the [Proceeds of Crime \(Jersey\) Law 1999](#) (the "**1999 Law**"), following the [Proceeds of Crime \(Amendment No. 6\) \(Jersey\) Law 2022](#) coming into force earlier this year.
4. FATF Recommendation 12 sets out various obligations with respect to the identification of PEPs. The FATF methodology in relation to Recommendation 12, specifically at 12.4, states:

“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...”

Article 11(3)(c) of the MLO requires a relevant person to maintain appropriate and consistent policies and procedures to determine whether a beneficiary under a life insurance policy is a PEP. Although the guidance in the JFSC’s Handbook may be interpreted so that the effect is that that beneficial owners of beneficiaries are already included in Article 11(3)(c), it is proposed to clarify this point by specifically include the phrase “and/or, where required, the beneficial owner of the beneficiary” in the obligation.

5. FATF Recommendation 18 states that “Financial Groups” should be required to implement group-wide programmes against money laundering and terrorist financing. Financial group was previously defined by FATF so as to include a Financial Institution that was part of a parent/subsidiary or branch relationship with another Financial Institution and was linked to the concept of consolidated supervision under the Core Principles. This is currently reflected in the MLO Article 11A, which applies various obligations to members of financial groups (as defined by Article 1).

However, the [FATF plenary in October 2021](#), announced a number of actions, the effect of which are:

“the requirements in Recommendation 18 on group-wide programmes against money laundering and terrorist financing apply... to DNFBPs (Designated Non-Financial Businesses and Professions) operating under the same structures as financial groups”.

The concept of “Financial Group” is no longer linked to consolidated supervision under the Core Principles. Thus, a DNFBP operating in a parent/subsidiary or branch type group should also be subject to the same group obligations as a financial institution in such a group.

It is therefore proposed to amend Article 11A (additional requirements for financial groups) to provide that the additional obligations imposed on financial groups also apply to a group of DNFBPs falling within Part 3 of Schedule 2 to the 1999 Law if there is, in relation to the group, a parent company or other legal person that exercises control over every member of the group.

6. Article 13 (application and timing of customer due diligence measures) is amended by inserting “(if applicable)” after “15B” for clarification purposes.
7. With regards to Article 15A (enhanced customer due diligence measures in relation to politically exposed persons), the proposed new paragraph (2A) allows a relevant person to treat a domestic PEP as not being a politically exposed person 2 years after the person ceases to be entrusted with a prominent public function if, following a risk assessment, the person does not present a higher risk of money laundering and there is no reason to continue to treat the person as a PEP.

New paragraphs (2B) and (2C) make similar provisions in relation to a foreign PEP and a prominent person after a period of 5 years. While new paragraph (2D) provides that paragraphs (2A) to (2C) apply also to immediate family members or close associates of the PEP or prominent person.

A new definition of “prominent public function” in relation to an international organisation is inserted to align with the FATF Glossary and to provide that the definition includes immediate family members or close associates.

These new provisions will align Jersey’s AML/CFT regime with international best practices where most other jurisdictions provide for the possibility of PEP declassification. However, this is done in a measured way by enabling declassification only after certain time periods, reflecting Jersey’s risk profile, and subject to the application of a risk-based approach.

8. With regards to Article 15A (enhanced customer due diligence measures in relation to banking relationships outside Jersey), the scope of the provision in respect of who is subject to the obligation, is currently defined as applying to all “Relevant Persons”, when it should apply only to Financial Institutions and Virtual Asset Service Providers (VASPs)<sup>1</sup>. Furthermore, the scope of the provision in terms of “the type of relationship addressed” should also be narrower, only applying to “correspondent banking and similar relationships” and not to all banking relationships, while the scope provision in respect of the counterparty in the relationship currently refers to “Institution” but should likewise apply to Financial Institutions and VASPs.

Thus, it is proposed to amend Article 15B to require a Jersey Financial Institution or Jersey VASP, which has or proposes to have a correspondent banking or similar relationship with a foreign Financial Institution or foreign VASP, to apply enhanced customer due diligence measures on a risk-sensitive basis. Paragraph 3 provides definitions of Jersey and foreign Financial Institutions and VASPs.

9. With regards to Article 17A, paragraph (1) is amended to provide that none of the identification exemptions in Part 3A (Articles 17B to 18) apply in the cases set out in that paragraph (suspicion or higher risk of money laundering, customer is resident in non-FATF compliant country or has relevant connection with enhanced risk state). Paragraph (2) prevents exemptions applying to third parties who are customers of respondent banks, regardless of the risk, which does not align with standard global practice or the FATF guidance on correspondent banking and is therefore deleted.
10. With regards to Article 23A (shell banks), there are issues as to both, the types of persons to whom the provision applies and the types of relationship to which the provision applies. Recommendation 13 applies to Financial Institutions and VASPs, whereas Article 23A applies to banks only. This is because Article 23A(1) applies to relevant persons set out in Article 23A(3) which applies to banking relations.

The Recommendation applies to correspondent banking relationships (not including similar relationships), whereas 23A(1) refers to all “banking relationships”. Finally, Article 23A(3) also contains a number of exemptions, i.e. the Bank of England, the central bank of a member State of the EC or the National Savings bank of the UK. Recommendation 13.3 contains no corresponding exemptions.

Thus, it is proposed to amend Article 23A so that paragraph (1) is broadened to include Jersey Financial Institutions and Jersey VASPs as defined in Article 15B, so that they are prohibited from entering into or continuing a correspondent banking relationship with a shell bank. Paragraph (2) is also broadened to include Jersey Financial Institutions and Jersey VASPs, so that they are required to take appropriate measures to ensure that they do not enter into or

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<sup>1</sup> See FATF Recommendations 13 and 15.

continue a correspondent banking relationship with a Jersey or foreign Financial Institution or a Jersey or foreign VASP that is known to permit its accounts to be used by a shell bank.

Paragraph (3), which provides exceptions for a deposit-taking business doing anything on behalf of the States, the Bank of England, the central bank of a member State of the European Community or the National Savings Bank of the United Kingdom, is deleted. Paragraph (4) is amended to insert definitions of Financial Institutions and VASPs.

11. It is proposed that the proposed amendments come into force on **1 September 2023**.

## **IMPACT ON RELEVANT PERSONS**

The impact of the proposed Draft Amendments on relevant persons is anticipated to be not significant. The proposed Draft Amendments mainly look to provide clarifications and to align the terminology of the MLO with FATF terminology. As to the new requirement regarding DNFBP groups, it is expected that most DNFBPs which are part of such an ownership structure already have relevant policies and procedures in place and therefore the impact should not be significant either. The proposed amendments regarding PEP declassification and the clarification regarding digital identification systems have been prepared in close co-operation with industry and should be welcomed.

## **QUESTIONS**

1. Do you agree with the proposed amendments regarding Article 1 (Interpretation)? If not, please explain.
2. Do you agree with the proposed amendments regarding Article 3 (Meaning of “customer due diligence measures”)? If not, please explain.
3. Do you agree with the proposed amendments regarding Article 4 (Meaning of “one-off transaction”)? If not, please explain.
4. Do you agree with the proposed amendments regarding Article 11 (Policies, procedures and training to prevent and detect money laundering)? If not, please explain.
5. Do you agree with the proposed amendments regarding Article 11A (Additional requirements for financial groups)? If not, please explain.
6. Do you agree with the proposed amendments regarding Article 15A (Enhanced customer due diligence measures in relation to politically exposed persons)? If not, please explain.
7. Do you agree with the proposed amendments regarding Article 15B (Enhanced customer due diligence measures in relation to banking relationships outside Jersey)? If not, please explain.
8. Do you agree with the proposed amendments regarding Article 17A (Circumstances in which exemptions under this Part do not apply)? If not, please explain.
9. Do you agree with the proposed amendments regarding Article 23A (Shell banks)? If not, please explain.

## **RESPONDING TO THE CONSULTATION**

The Government invites comments in writing from interested parties on the proposals and the Draft Amendments included in this consultation. Where comments are made by an industry body or association, Government requests that body or association provides a summary detailing the type of individuals or businesses it represents who have expressed a view on the proposals.

All responses must be provided before the closing date, set out above to [B.Hertstein@gov.je](mailto:B.Hertstein@gov.je).