

## ANSWERS BY THE GOVERNMENT OF JERSEY TO WRITTEN QUESTIONS RECEIVED FROM THE EP PANA COMMITTEE

The answers should be read in conjunction with the joint letter from the Chief Ministers of Guernsey and Jersey to the Chair of PANA of 10 April 2017 and the annex to that letter.

1. **Could you please explain the rules on due diligence, know-your-customer policy and ultimate beneficial owner principles in the Channel Islands? Are these formalities always required if you want to open a bank account?**

### Answer

#### Customer Due Diligence (CDD)

Jersey has a comprehensive and detailed regime concerning customer due diligence. In 2015 Jersey was assessed by MONEYVAL and a [Report was published](#) containing a detailed analysis of Jersey's compliance with the 2003 FATF Recommendations concerning Customer Due Diligence. Parts 3.1 and 4.1 of the Report specifically relate to customer due diligence obligations for financial institutions and Designated Non-Financial Services Businesses (DNFBPs) e.g. lawyers, accountants and estate agents.

In short summary, the obligation to conduct CDD in Jersey arises predominantly from 3 pieces of legislation:

- i. Proceeds of Crime (Jersey) Law 1999
- ii. Terrorism (Jersey) Law 2002
- iii. Money Laundering (Jersey) Order 2008

The application of the three pieces of legislation in the Jersey regime prescribes that a relevant person (financial institution or DNFBP) must apply identification measures before the establishment of a business relationship and must have policies and procedures in place to ensure CDD is conducted at appropriate times during the continuation of that business relationship.

In reference to the specific reference to opening a bank account. The provision of banking services is regulated in Jersey and is therefore caught by the relevant provisions of the above legislation. CDD must therefore always be completed in full.

Jersey was rated Largely Compliant in the 2015 MONEYVAL Report in the two relevant 2003 FATF Recommendations that deal with CDD requirements (R5 & R12).

## Ultimate Beneficial Ownership and Control

Jersey has a comprehensive policy on the identification of ultimate beneficial ownership (UBO) and control of legal entities and legal arrangements. Part 5 of the MONEYVAL Report outlines in detail the policy and its application and confirms that Jersey was rated Largely Compliant in respect of access to beneficial ownership information for legal persons (R.33) and legal arrangements (R.34) in the 2015 Report.

In broad terms the following systems operate in Jersey to obtain, maintain and verify beneficial ownership information for companies, foundations and partnerships, namely:

- Requirement to incorporate through the central Companies Register who conduct independent vetting of information provided to them on incorporation;
- Requirements that are placed on companies, foundations and partnerships to keep information on shareholders, beneficiaries and partner owners at their registered offices and to file annual returns;
- Requirements to obtain the consent of the Jersey financial services regulator, the Jersey Financial Services Commission (JFSC), prior to issuing shares or admitting members.

In respect of legal arrangements, any person who acts “by way of business” in the formation or administration of legal arrangements is caught by the provisions of the relevant legislation listed above and must identify the ultimate beneficial owners and controllers of the legal arrangement. Equally, amendments made shortly after the 2015 MONEYVAL Report now require anyone who acts as trustee of an express trust (even if not by way of business) to abide by the provisions of the Money Laundering (Jersey) Order 2008 in relation to identification of the ultimate beneficial owners and controllers of the express trusts.

The World Bank in their 2011 Report under the Stolen Assets Recovery Initiative (StAR) entitled *“The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It”* recognised at chapter 4.1 that the “The Jersey Model” should be upheld as an example of how access to beneficial ownership and control information can be implemented in a jurisdiction. Jersey’s combination of a central register of the UBO with a high level of vetting/evaluation not found elsewhere and regulation of Trust and Company Service Providers (TCSPs) of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency.

## Supervision and Enforcement of CDD

The CDD requirements in the Jersey regime and particularly the requirements to identify the ultimate beneficial owners and controllers of legal entities and legal arrangements are regular topics of thematic examinations by the JFSC. The JFSC regularly review compliance by all regulated entities with the requirements of the regime and have powers to issue civil administrative/regulatory penalties for failure to comply with the regime or to refer the matter to the Attorney General for criminal prosecution.

**2. Could you please provide information on whether there are public beneficial ownership registries and public company registries in Jersey? What are the information disclosure provisions for trusts, foundations and companies in general?**

**Answer**

Jersey in common with almost all EU, OECD and G20 Member States does not have a public beneficial ownership register for which there is currently no international standard. However the report published in May 2016 on the assessment by Moneyval of Jersey's compliance with international AML standards includes the following statement - "Jersey's combination of a central register of the UBO [Ultimate Beneficial Owner] with a high level of vetting/evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency."

Moneyval assessed Jersey's compliance with recommendations on access to beneficial ownership and control information of legal persons and legal arrangements as largely compliant, and the minor recommendations for improvement included in the assessment have been acted upon.

Jersey is committed to further enhancing the existing central register of beneficial ownership information by the more regular up-dating by trust and company service providers of the beneficial ownership information held on the Register, and by creating a central register of Directors for Jersey.

In April 2016 Jersey agreed an Exchange of Notes with the UK which will enable UK law enforcement authorities, who have been able to obtain information within 7 days to their declared satisfaction, to extend the arrangements to within 24 hours and in special cases to within one hour. Jersey has told other jurisdictions including EU Member States that this arrangement could be extended to them, through a bilateral agreement, if so desired and if the international standards of confidentiality and data safeguards are met.

In November 2016 Jersey joined with some 50 jurisdictions including all the EU Member States in a commitment to a proposed new initiative on access to beneficial ownership information. Given its internationally recognised leading position Jersey has offered to participate in the work of the FATF and Global Forum in the development of this initiative and also on ensuring more effective compliance with the present standard.

Jersey is committed to compliance with international standards set by bodies such as the OECD and the FATF. To-date there is not such an international standard for public disclosure of beneficial ownership. With an international standard that has global application there will be a level playing field and a standard that can be expected to balance the benefits of public information against the rights of the individual to privacy and the protection and security of the individual.

The importance of a global approach is referred to in the EP Study on “Tax Evasion, money laundering and tax transparency in the EU Overseas Countries and Territories”. To quote “What is important is to have global solutions to the global problem of tax havens. Merely controlling the flow of investment and money to the EU’s OCTs would be equivalent to simply shifting the problem elsewhere. Tax evaders and money launderers would find new methods and offshore havens in wealthy countries, such as certain US states and EU Member States, to benefit from such a situation.”

In Jersey’s view the key requirements for the effective combatting of tax evasion, aggressive tax avoidance or AML worldwide are:

- There must be standards that have global application set by an international standard setter;
- There must be an effective process for the cross border exchange of information both on request and automatic;
- The information to be exchanged for the benefit of law enforcement and tax authorities must be adequate, accurate and current;
- There must be an effective process in place for assessing compliance with the international standards which process is applied on a level playing field basis worldwide.

Of these requirements the one that is of paramount importance is the need for the information made available to law enforcement and tax authorities to be adequate, accurate and current. This is of particular importance when providing information on the ultimate beneficial owner or controller of a legal entity or a legal arrangement. This has long been Jersey’s prime objective in serving the interests of law enforcement and tax authorities and our leading position in this respect, that has been internationally recognised. Hopefully it will be so recognised by the PANA Committee.

The detailed provisions in respect of companies, foundations, trusts etc is included in material (see attached Annex 1) that has been provided to the Global Forum on Transparency and Exchange of Information for Tax Purposes in connection with the assessment of Jersey currently being undertaken against the revised terms of reference being applied by the Global Forum in assessing compliance with the international standards on EOIR and in particular those relating to the availability and accessibility of beneficial ownership information.

- 3. Could you please explain how intermediaries, such as lawyers, tax advisors and accountants are regulated in the Channel Islands? Is there an official authority to investigate banks or intermediaries involved in practices such as money laundering, tax avoidance or tax evasion in the Channel Islands?**

### **Answer**

The Jersey Financial Services Commission (JFSC) is the Island's statutorily established financial services regulatory authority.

In addition to the usual types of activities covered by regulation (e.g. banking, asset management, insurance, etc.), it is important to note that in Jersey the provision by way of business of trustee services and company formation activity is also subject to regulation (including authorisation, ongoing supervision and where necessary enforcement action).

The laws which establish the Commission, and the law covering the regulation of "trust company business", are available here:

<https://www.jerseylaw.je/laws/revised/Pages/13.250.aspx>

<https://www.jerseylaw.je/laws/revised/Pages/13.225.aspx>

Equally, by virtue of the Proceeds of Crime (Jersey) Law 1999 and the Terrorism (Jersey) Law 2002, DNFBPs (lawyers, accountants and estate agents) are regulated for anti-money laundering and countering the financing of terrorism in Jersey by the JFSC.

The JFSC has a full suite of regulatory powers (ability to obtain information, carry out supervisory visits, etc.) and enforcement powers (including the power to ban individuals from the industry, remove firm's authorisations, levy financial penalties, etc.)

More details of the JFSC's activity can be found in their annual reports, available here:

[http://www.jerseyfsc.org/the\\_commission/general\\_information/publications/annual\\_reports.asp](http://www.jerseyfsc.org/the_commission/general_information/publications/annual_reports.asp)

The Commission's Codes of Practice applying to trust company business is available here:

<http://www.jerseyfsc.org/pdf/TCB-Code-1-Sept-2016-outsourcing-update-2017.pdf>

Examples of the Commission's enforcement activity can be found here:

[http://www.jerseyfsc.org/the\\_commission/general\\_information/public\\_statements/public\\_statements.asp](http://www.jerseyfsc.org/the_commission/general_information/public_statements/public_statements.asp)

#### **4. To your knowledge, have the Channel Islands taken any legal steps regarding intermediaries following the Panama Papers revelations?**

##### **Answer**

There have been no changes in Jersey's regulatory laws as a direct consequence of the publication of the Panama Papers. Jersey already had a long standing regulatory regime which included the regulation of TCSPs and which had been recognised internationally as being ahead of the practice of other jurisdictions. Following the Panama Papers revelations steps were taken to confirm that the regulated entities were meeting their statutory obligations although there had been no evidence presented by the revelations to suggest that they were not doing so. These steps were taken by the JFSC, the islands financial regulator and the JFCU, the Islands Financial Intelligence Unit. They are detailed below:

##### Action by the JFSC

In respect of the Panama Papers, the JFSC's response falls into three main categories:

##### *1. Self-reporting by firms*

In compliance with the Codes of Practice, there is a strong track record of regulated firms contacting the JFSC to discuss issues which may be of regulatory concern. In the case of the Panama Papers a number of firms contacted the JFSC immediately after their publication to report any business links they had with Mossack Fonseca and reviews they were carrying out of client structures.

##### *2. Follow-up on specific cases*

The global media highlighted a number of specific links to Jersey in the Panama Papers material. Often in these reports there was no suggestion of any wrong-doing, merely the factual report of a Jersey entity being part of a client structure, or a Jersey firm asking Mossack Fonseca to establish a company. The JFSC investigated a number of these specific cases to determine whether firms had complied with their legal and regulatory requirements.

##### *3. Survey of firms*

The JFSC sent a structured information request to relevant regulated firms asking them to confirm (amongst other things) whether they had carried out a review of business links with Mossack Fonseca and whether any issues of concern had been identified. A press release concerning this exercise can be found here: [http://www.jerseyfsc.org/the\\_commission/general\\_information/press\\_releases/releas\\_e351.asp](http://www.jerseyfsc.org/the_commission/general_information/press_releases/releas_e351.asp)

The JFSC also followed-up Panama Paper related topics as part of its normal day-to-day supervision with firms (e.g. through on-site visits).

The Panama Papers highlighted that some entities based in Jersey had used Mossack Fonseca to establish companies. It is important to note that, irrespective of the location of the client, if a Jersey firm is carrying on regulated activity it must follow Jersey laws and requirements. This importantly includes the requirements relating to CDD and

Beneficial Ownership and Control identification. There are many reasons why clients of firms may wish to establish non-Jersey companies – for example, proximity, familiarity with the other regime, etc.

Mossack Fonseca had a small office in Jersey, although latterly it was not carrying out any regulated activity. As with a number of other Mossack offices, it closed subsequent to the disclosures.

As with all EU financial regulators, the JFSC is subject to information disclosure restrictions which make it a criminal offence to release much regulatory information except in certain circumstances. The JFSC cannot therefore disclose details of its discussions/actions with individual regulated firms. Should any enforcement activity result in a public statement, this will be included on the webpage set out above.

#### Action by the Joint Financial Crime Unit – Jersey's FIU

The Joint Financial Crimes Unit (JFCU) is composed of officers from the States of Jersey Police and the Jersey Customs and Immigration Service, supported by a team of civilian staff.

The JFCU is divided into 3 sub-units: Financial Intelligence Unit (FIU), Financial Crime Investigation Team, and Drugs Trafficking Confiscation Unit.

Jersey FIU serves as the national centre regarding the receipt and analysis of suspicious activity reports (SARs), terrorist financing, and associated predicate criminality; and for the dissemination of those results. Every SAR is scrutinised upon receipt and subject to an established grading process, with methodical and structured analysis.

The FIU also receives and responds to requests for assistance from overseas FIUs and competent authorities on AML/CFT enquiries, as well as miscellaneous information reports from a variety of sources.

The intelligence assessment seeks to establish if the suspicions prompting submission of a SAR corresponds to a predicate criminal offence, active criminal investigation or prospect of a criminal investigation in Jersey or any relevant jurisdiction. Analysis triggers consideration of the initiation of a domestic criminal investigation and where appropriate referral to domestic law enforcement.

The FIU make no distinction between fiscal and non-fiscal matters, and no de-minimums financial thresholds are applied. The ethos of Jersey FIU is to share as much possible relevant intelligence with FIUs and law enforcement authorities globally regarding fiscal and non-fiscal matters. Significant spontaneous intelligence sharing is employed, and Jersey FIU does not require reciprocal agreements or MOUs for such activity. For example, 1917 spontaneous intelligence disseminations were made in 2014, resulting from 2287 SARs received in that year.

Beneficial ownership detail is exchanged with international counterparts as a matter of routine in the course of intelligence disseminations. It rarely features in isolation, generally forming part of a wider information requirement.

A review of all FIU material derived from SARs and other intelligence featuring Mossack Fonseca from 2004 onwards has been conducted. The review demonstrated that intelligence had been analysed and disseminated appropriately.

The release and publicity of the Mossack Fonseca papers resulted in 4 SARs being received by the FIU. In all cases the material was analysed and disseminated in accordance with standard procedures.

For operational reasons, the FIU do not disclose sensitive case information. Work continues with international FIU partners and law enforcement agencies exchanging relevant information in pursuit of money laundering, terrorist financing and associated predicate criminality. This includes tax evasion and economic crime more broadly. At present, there is 1 active criminal investigation being conducted by the JFCU – Jersey, in which the use of Mossack Fonseca features. The investigation, originating from SAR-based intelligence, is not consequential to the publication of material.

**5. Could you please inform us if there have been any changes of the system of tax law in the Channel Islands following the Panama Papers revelations?**

**Answer**

There have been no changes in Jersey's tax law as a direct consequence of the Panama Papers revelations. Jersey already had the necessary legislation in place to support the Island's general commitment to the international standards on tax transparency and information exchange. This legislation provides for EOIR, AEOI and transparency of beneficial ownership information. However as new standards are established or strengthened the Island's legislation can be expected to be extended in line with Jersey's established policy. As noted in the answer to the second question above, legislation is being enacted to further enhance the quality of the information held on the central business register. In December 2016 the Taxation (Implementation)(International Tax Compliance )(Country by Country Reporting – BEPS) (Jersey) Regulations 2006 were made to provide for compliance with the BEPS requirements on CbCr.

The statement has been made in a report presented to the Committee on the Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States that "the idea that only non-cooperative jurisdictions qualify as tax havens disregards that some jurisdictions may only appear cooperative while remaining operatively a tax haven." It is assumed that "remaining operatively as a tax haven" means that "the jurisdiction facilitates offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction". Jersey is confident that it can show that this is not so in its case for the reasons set out in the answer to question 11

In answering this question the opportunity is taken to describe Jersey's corporate tax structure. Jersey's standard corporate tax rate of 0% is based on two key principles. One is the EU Code Group on Business Taxation principle of non-discrimination between resident and non-resident owned companies, The Code Group ruled in 2011 that Jersey's corporate tax measures are not harmful because the zero rate applies to resident and non-resident owned companies and is not lower than the level of taxation

which generally applies. The other is the principle of tax neutrality combined with transparency. As an international finance centre, Jersey acts as a “financial entrepôt” in facilitating the investment of funds drawn from around the world into European financial markets. In the absence of Double Taxation Agreements the zero rate is required to avoid double taxation. It is believed that the return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place.

Jersey believes that the return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place. The Jersey authorities recognise that for tax to be levied where it is properly due it is necessary for the countries concerned to have information to help them with their tax assessments. With this in mind Jersey has given its full support for the transparency principles central to the current G20, OECD and EU tax initiatives.

Jersey believes that each jurisdiction should have the right to set its own tax rates according to its own requirements but that each jurisdiction should also comply with internationally accepted principles of fair tax competition supported by transparency and information exchange. As is agreed among the EU Member States, and the OECD in respect of its members, tax sovereignty is a fundamental principle. In this context it has been accepted that a zero or low rate of corporate tax is not in itself a definition of unfair tax competition.

Jersey has a higher corporate tax rate of 10% paid by all those engaged in certain financial services activity. This is comparable to that borne by corporate entities in many other countries either as a published tax rate or an effective tax rate.

**6. According to the Panama Papers revelations, some banks (e.g. Credit Suisse Channel Islands Ltd., Coutts & Co. Trustees (Jersey) Ltd. and Rothschild Trust Guernsey Ltd.) were involved through their subsidiaries in the Channel Islands. To your knowledge, are there any reasons for that?**

**Answer**

We are aware that a number of Financial Institutions based in Jersey featured in the top ten list of financial institutions that instructed Mossack Fonseca to form and/or administer legal entities on behalf of their clients. However there was no evidence to suggest that their instructions were other than in connection with legitimate business or that the institutions concerned were not fully aware of the ultimate beneficial owner and of the nature of the business being undertaken as is required of them under Jersey regulatory and AML legislation.

Jersey has been in the forefront in adopting the legislation required for full compliance with the relevant international standards. Jersey has continued and will continue to do so in relation to CRS and BEPS, and the developing standards on beneficial ownership and control, and it has not needed the Panama Papers revelations to show cause for such action.

Jersey has an exceptional reputation globally for private wealth management. Private wealth management inevitably involves the formation and administration of a variety of different legal entities and legal arrangements in order to allow appropriate business activity to be conducted and flexibility for investments. Given the volume of private wealth management conducted in Jersey, the involvement of a financial institutions in Jersey (such as those listed in the question) in instructing Mossack Fonseca to form and administer legal entities and legal arrangements is not surprising.

Equally, from all of the evidence available, it is important to note that a large proportion of business conducted by Mossack Fonseca was legitimate business that did not involve activity that breached criminal or regulatory standards. This point can be made more broadly by reference to a 2006 FATF Paper entitled [“The Misuse of Corporate Vehicles, including trust and company service providers”](#) In the Prelude to that paper the following is stated:

*“In examining the potential misuse that corporate vehicles may be subject to, it is important to bear in mind that, of the millions of companies that exist, the vast majority engage in legitimate business, and only a small minority are misused. Likewise among the trusts that are set up, the majority serve legitimate purposes, and only a small minority are misused.”*

For Jersey, it is also important to state that any Financial Institution or DNFBP acting by way of business in or from within Jersey is required to comply with Jersey anti-money laundering and countering the financing of terrorism legislation listed above.

This means that regardless of the jurisdiction of incorporation of a legal entity or formation of a legal arrangement, if it is incorporated through a service provider in Jersey or administered from Jersey our regime in respect of CDD and beneficial ownership will apply. This ensures that Jersey has a single standard which applies across the board and limits the opportunity for jurisdictional arbitrage when considering legal entities and legal arrangements from different jurisdictions.

**7. Do the Channel Islands have a public register of trusts? Are trusts supervised and if so, how?**

**Answer**

Jersey in common with EU, OECD and G20 Member States does not have a public register of trusts for which there is no international standard. Also, as evidenced by a ruling by the French Constitutional Court, such a register can be expected to be the subject of legal challenge. However Jersey is able to provide law enforcement and tax authorities with adequate, accurate and current information on the trustees, settlor, beneficiaries, and protectors of a trust.

Jersey has had legislation in place to regulate Trust and Company Service Providers (TCSPs) since 2000 and such persons are required to hold, and keep up to date, beneficial ownership information for all structures administered by the TCSPs. That information is then available to the financial regulator and law enforcement authorities and can be provided to competent authorities in other jurisdictions using gateways

provided for in the legislation, as well as under the Islands' tax and mutual legal assistance (MLA) agreements.

The detailed position on trusts is referred to in Annex 1 to which the answer to question 2 above refers.

Trusts are often described as vehicles designed to hide information from the authorities. However they are no different in this respect than some companies. To quote from a FATF report on the misuse of corporate vehicles – “ In examining the potential misuse that corporate vehicles may be subject to, it is important to bear in mind that, of the millions of companies that exist, the vast majority engage in legitimate business, and only a small minority are misused. Likewise among the trusts that are set up, the majority serve legitimate purposes, and only a small minority are misused.”

This view is also reflected in the EP Study on “Tax evasion, money laundering and tax transparency in the EU Overseas Countries and Territories” when referring to Houben’s analysis on the mandate of the PANA Committee that “there is nothing unlawful about offshores and advising on and assisting in the setting up and management of offshores as such”.

For many trusts their position can be equated with the position of an individual, the only difference being that an asset such as a bank account is held by a trustee rather than by a natural person.

The key to information about a trust lies with the trustee. Through the requirements imposed by international standards trustees should know the identities of the settlor and beneficiaries, and should be obliged to provide this information to the authorities if requested to do so. It is therefore the requirements placed on the trustees by the legislation of the jurisdiction in which the trustees are located, and the third party assessment by bodies such as the IMF or the Global Forum as to the effectiveness with which the international standards on transparency and information exchange are being complied with, which should be the focus of attention in deciding whether information requests are likely to be responded to the satisfaction of the requesting authority.

In this context, the interpretative note issued by the Financial Action Task Force (FATF) in respect of Recommendation 25 on transparency and beneficial ownership of legal arrangements, is an important statement. The note states that countries should require trustees of any express trust to hold adequate, accurate and current beneficial ownership information regarding the trust. Also that professional trustees should be required to maintain this information for at least five years after their involvement with the trust ceases.

The Global Forum Peer Review Group has considered the issues arising in ensuring compliance with the requirements relating to the availability and accessibility of information on a trust. The consensus is that, while there are a number of different persons involved in a trust who may be relevant when considering the question of where trust information can be found, it is the trustees that have the greatest obligations placed upon them by common law or statute law and who therefore should be the best source of information.

The position is straightforward when there is a single jurisdiction in which the trust is created, where all the relevant parties to the trust reside and where the trust's assets are located. This will apply to most trusts formed in the USA. The position is much more complex where the relevant law under which the trust is formed, the relevant parties and the assets are dispersed across several jurisdictions. In these cases the position generally is as follows –

- The jurisdiction under whose laws the trust is created may not know a trust has been formed in another jurisdiction. However the law should impose obligations on the trustees so that action can be taken against the trustees by the settlor, the beneficiaries, or the authorities if those obligations are not properly met.
- The jurisdiction of residence of the trustees should be expected to have the power to enforce obligations on the trustees to maintain and produce information when requested. Trustees can be resident in civil and common law jurisdictions. Civil law jurisdictions which have ratified the Hague Convention may well have resident trustees of foreign trusts.
- The jurisdiction where any relevant trust service provider or other professional intermediary is located should be expected to have in place AML or broader regulatory requirements that oblige the service provider to keep relevant information concerning trusts, including identifying the beneficiaries and settlors. In many cases the service provider will act as a corporate trustee in which case they will also be bound by the obligations placed on the trustees.
- The jurisdiction of residence (or place of business ) of the settlor and beneficiaries may have information available if the parties to the trust are faced with reporting obligations under tax laws but otherwise may have no way of knowing that their residents are party to a trust settlement. Indeed with discretionary trusts the beneficiaries themselves may not know they are a beneficiary until they receive a distribution from the trustees.
- The jurisdiction where the trust's assets are located may have information because certain types of property may entail registration or filing requirements under commercial law but otherwise will not know of the trust's assets other than through access to the trustees.

It should be clear from the foregoing that the best and most complete source of information about a trust and the parties to the trust will be the trustees and the jurisdiction in which the trustees are resident. Consequently the best position will also be where the jurisdiction in which the trustees are resident has the ability to enforce the relevant obligations on the trustees. Whether this is the case should be apparent from the individual jurisdiction reports arising from the Global Forum's programme of assessments of compliance with the international standards.

Jersey imposes obligations on trustees through Common Law backed by case law, through a Trust Law, through AML provisions applying to professionals providing trust services, and through the regulation of all trust and company service providers.

**8. According to the national legislation and without going too much into details, could you please describe the procedure of a company registration in the Channel Islands? Could you please inform us how long this procedure normally takes?**

**Answer**

The Companies Registry in Jersey, based within the JFSC, is responsible for Company and legal entity incorporation and Registration in Jersey. The Director General of the JFSC acts as the Registrar of Companies.

Companies in Jersey can either be formed by local residents or Trust and Company Service Providers (TCSPs). Non-residents are not permitted to incorporate companies without the use of a TCSP. All TCSPs in Jersey are fully regulated by the JFSC to a standard similar to regulation of financial institutions elsewhere (described further above). The TCSP is bound by Jersey anti-money laundering and countering the financing of terrorism regime as outlined in the above questions.

The Companies Registry also conducts independent vetting of information submitted to it during the incorporation of a company. This vetting uses a variety of open source and closed source information to ensure that the information contained on the company is accurate. Jersey considers this to be a critical element of our regime to ensure that the information we hold and exchange with law enforcement and tax authorities on beneficial ownership and control of Jersey entities is accurate and useful to those authorities. The situation of the Companies Registry within the financial regulator also allows for information to be exchanged if, when vetting information provided on a company being incorporated by a TCSP, a discrepancy is found. This allows for “a second line of defence” against inaccurate information being provided to the Registry and allows for issues to be referred into the supervision and enforcement programme.

The Companies Registry offers a range of different times for incorporation or registration of Jersey legal entities – the faster the requested time for incorporation, the higher the fee for incorporation. This is to allow for the variety of activity that occurs in Jersey, from local trading companies (butcher/baker) who do not require expedited incorporation, through to a complex fund vehicle for the investment of pension funds that may require very rapid incorporation to meet investment deadlines.

A processing map of the incorporation process is included at Annex 2 to these questions.

It is also important to note that Jersey has a [Sound Business Practice Policy Statement](#) that is operated by the Companies Registry which listed a number of activities that are considered more sensitive to the reputation of Jersey. The operation of the statement means that if a legal entity is incorporated that will carry out a more sensitive activity that could affect the reputation of Jersey – it must be noted upon incorporation and the application for incorporation will receive greater scrutiny by the Registry. Equally, the time to consider applications where the activity carried out is included in the Statement will be longer due to the greater scrutiny required.

**9. Could you please explain the Channel Islands' relationship with the UK, especially regarding the legal framework and exchange of information in tax matters? Is there a close cooperation between your government and the British government on tax affairs?**

**Answer**

For over 800 years, two fundamental principles have been at the heart of Jersey's relationship with the United Kingdom: loyalty and autonomy. When Jersey chose to break with Normandy in 1204, it opted to remain loyal to the King of England. The Island is fiercely proud of its record of many centuries of steadfast loyalty to successive Monarchs descended from the Duke of Normandy. And Jersey is just as proud of its fiercely-guarded autonomy from the UK Parliament.

Jersey, like the other Crown Dependencies, is not and has never been part of England or the United Kingdom but is instead a self-governing dependency of the Crown. Jersey has its own directly elected legislative assembly; administrative, fiscal and legal systems and its own courts of law. The UK Parliament by convention does not legislate for the Island without its express consent and any United Kingdom legislation purporting to have effect must be subject to a positive vote from the States of Jersey Assembly before that legislation may be registered and have effect in Jersey law.

In short, the Island is an autonomous jurisdiction in relation to domestic affairs, but the Crown – in practice through Her Majesty's Government – remains formally responsible for the Island's defence and, to some extent, its international affairs.

This combination of fiscal autonomy founded on centuries of custom and usage and the UK's retained ultimate responsibility for international relations arising from the Island's allegiance to the Crown is reflected in the granting by the UK Government of Letters of Entrustment that provide for the Island to negotiate tax agreements in its own right. This is also reflected in a Framework Agreement signed in 2007 by the Jersey and UK Governments which recognises that the UK has no democratic accountability in or for Jersey which is governed by its own democratically elected assembly.

In the context of the UK's constitutional responsibility for Jersey's international relations it was understood that:

- the UK will not act internationally on behalf of Jersey without prior consultation.
- the UK recognises that the interests of Jersey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. That is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Jersey can be expected to reflect the fact that the UK's membership of the EU only extends to Jersey in certain circumstances set out in Protocol 3 of the UK's Treaty of Accession.

The Framework Agreement also reflects that:

- Jersey has an international identity which is different from that of the UK.

- Both parties commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.
- The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by Jersey in developing its own position.
- The UK and Jersey will work together to resolve or clarify any differences which may arise between their respective interests.

In practice the relationship between Jersey and the UK on international tax matters is little if any different from that between Jersey and the other Member States and between Jersey and other jurisdictions party to the implementation of the current international tax obligations. Thus Jersey has a TIEA with the UK, a historic DTA which is in the process of being replaced with a DTA in accordance with the OECD Model DTA , and will be exchanging information in accordance with the Common Reporting Standard (CRS). Ahead of the CRS in 2013 an IGA was signed with the UK which provided for Automatic Exchange of Information (AEOI) on a par with what Jersey had agreed with the USA in respect of FATCA.

One aspect of the relationship with the UK that is not currently mirrored in the relationships with other jurisdictions is the Exchange of Notes agreed with the UK in April 2016 which will enable UK law enforcement authorities, who have been able to obtain information within 7 days to their declared satisfaction, to obtain information on beneficial ownership within 24 hours and in special cases within one hour. Jersey has told other jurisdictions including EU Member States that it is prepared to enter into discussions on the application of a similar arrangement, through a bilateral agreement, if this is so desired and if the international standards on confidentiality and data safeguards are met.

Jersey applies a good neighbour policy in its relations with the UK as it has also done with the EU. Jersey lent support to the UK Government in the implementation of its voluntary disclosure facility and in a statement issued in July 2014 the Chief Minister said -

*“We support fair tax competition, and view legitimate tax planning as an appropriate response to operating cross-border. We do not support that which goes beyond legitimate tax planning for commercial purposes nor do we want our service providers to host abusive tax schemes designed to frustrate the will of national parliaments.*

*“The UK has recently committed to introducing new measures to deal with tax advisers who sell contrived and abusive tax avoidance schemes, with the aim of deterring and preventing such schemes. This includes the new High Risk Promoter Scheme and enhancements to their existing Disclosure of Tax Avoidance Scheme (DOTAS) including accelerated payments.*

*“Although it is for the UK Parliament to determine the extent to which UK residents are able to engage in lawful tax avoidance, given that Jersey does not wish to be associated with abusive tax schemes and in the spirit of being a*

*good neighbour, we want to support the UK in achieving their ambitions in relation to that which we consider to be unacceptable.*

*“In parallel with the work the UK has been undertaking, we have been working with industry and the Jersey Financial Services Commission (JFSC) to put in place a package of measures that will embed and reinforce the policy position that Jersey does not welcome abusive tax planning structures. These measures will also provide a framework allowing action to be taken by Government under Jersey’s business licensing regime against those who use the jurisdiction to facilitate abusive tax schemes targeted at UK residents.*

*“With effect from 1st of October 2014, we expect service providers to ensure that they identify if any new business they take on will facilitate the use by their client of a tax avoidance scheme registered under DOTAS, or are of the view that they are involved in a transaction which forms part of a scheme which has a DOTAS reference number, and document this accordingly (including confirmation of compliance with DOTAS reporting requirements) as part of their business take-on procedures.*

*“We are pleased the JFSC will monitor this as part of its assessment of service providers’ compliance with the regulatory requirement to organise and control their affairs effectively and to maintain adequate risk management systems. Jersey Finance will also be consulting members in relation to a proposed issuance of guidance notes expanding on the principles advocated here in relation to abusive tax schemes and we encourage all members to engage with this.*

*“To assist in the effective implementation of these actions we have been working with HMRC to ensure providers do not contravene HMRC’s DOTAS rules and to consider what information would be of assistance in identifying and responding to abusive tax planning schemes with which Jersey may have some involvement. Jersey will work closely with HMRC going forward to identify ways in which we can better collaborate with them on tax information exchange on complex international tax avoidance and structures. “*

**10. Philip Hammond gave an interview to a German newspaper on the outcome of the Brexit agreement. He said: “if we are forced to be something different, then we will have to become something different” and “If we have no access to the European market, [...] if Britain were to leave the European Union without an agreement on market access, [...] we could be forced to change our economic model and we will have to change our model to regain competitiveness. And you can be sure we will do whatever we have to do. [...] We will change our model [...] and we will be competitively engaged.”**

- 1) Do you share this opinion?**
- 2) If the UK loses its access to the European market, would it change the nature of your financial activities and if so, how?**
- 3) In your opinion, what would be your more favourable outcome: turning the UK into “*something different*” with a “*changed economic model*” “*competitively engaged*” or keeping financial access to the European market? Please explain.**

#### **Answer**

10(1) and 10(3) -Jersey Government does not express opinions on policy decisions/statements made by other governments.

10(2) - The nature of our financial activities will be influenced by whether or not we continue to have access to the European market. Our position is different from that of the UK because we have been a third country for financial services since 1973.

The EU should be aware of the benefits of investment from Jersey: Jersey is a conduit for 188 billion Euros of foreign investment into the EU 27(i.e excluding the UK), and supports up to 88,000 jobs. Capital is attracted to Jersey from the world at large because of its role as a quality international finance centre with tax neutrality. That capital is then passed on to the European financial markets. In effect Jersey acts as a financial warehouse from which Europe benefits. We want this flow of investment to continue to benefit the EU. Thereby Jersey is contributing to meeting the investment needs of the EU to which Vice President Dombrovski referred recently in his opening remarks at the Public Hearing on the Capital Markets Union Mid Term Review.

A major Jersey priority is financial services: this is the largest sector of Jersey’s economy and represents nearly all export income and produces around 42% of the Islands Gross Value Added, employing over 13,000 people, and generating the majority of revenue for the government.

Jersey is outside the EU for trade in services and that will not change: Jersey will remain a third country. The relatively limited market access it has already secured through “equivalence” decisions will remain in place unless the EU changes the equivalence rules in their application to third countries generally.

In addition, Jersey’s efforts to obtain improved reciprocal market access on the basis of equivalence is already being impacted by Brexit. An expected decision by the European Commission to grant passporting in respect of the Alternative Investment Fund Managers Directive to a number of third country jurisdictions including Jersey has been put on hold. This is despite these jurisdictions being the subject of the

positive technical assessment by ESMA. It is clear that a significant reason for this delay is that it is the EU's wish to consider what read across this might have to the Brexit negotiations on the key issue of UK access to EU financial markets.

**11. In your opinion, will the outcome of the negotiations between the EU and the UK have an impact on the Channel Islands regarding tax matters and if so, how?**

**Answer**

We would hope that our relationship with the EU generally and with Member States individually will continue to be based on recognition of our fiscal autonomy and our record of compliance with international standards and good neighbour policy.

Jersey is not in the EU but it recognises that it is part of Europe. Jersey's voluntary participation in support of the EU Directive on the Taxation of Savings Income and in meeting the criteria of the Code Group on Business Taxation are good examples of the good neighbour policy. Another example is Jersey's active cooperation on sanctions implementation. It is also reflected in the setting up of the Channel Islands office in Brussels, ably led by Steve Williams, and in the regular visits made for meetings with the Commission, the European Parliament, the Permanent Representatives and others.

Of particular importance for the Island is its non-inclusion in the proposed list of non-cooperative jurisdictions. Jersey clearly satisfies the requirements on tax transparency and anti-BEPS and Jersey is confident of satisfying the criterion on fair taxation which reads as follows –

“The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.”

This criterion is to be assessed by reference to the existing criteria of the Code Group on Business Taxation which Jersey was judged against in 2011 when its tax structure/system was found not to be harmful”.

Jersey considers it can present strong arguments in support of the view that it does not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. The arguments to be advanced include the following –

- Jersey companies are for the most part engaged in investment and property holding, or the provision of consultancy and other personal services. This is reflected in the nature of the requests for information received from jurisdictions with whom Jersey has a tax information exchange agreement (which, either bilaterally or multilaterally, includes all EU Member States);
- For investment holding companies their real economic activity is the offering of investment and the making of investment decisions both of which are undertaken in Jersey. Evidence of this is to be found in the number of persons employed in the provision of financial, accountancy and legal services;

- The substance of the activities in Jersey is to be seen in the comparisons that can be drawn with other centres providing similar services. Jersey has relatively few incorporated companies (30,000 compared to the many hundred thousand companies formed in Delaware and the BVI). Against this can be set the fact that in Jersey there are over 13000 persons employed in the provision of financial services and 5000 are employed in trust, company and fund administration .
- Jersey has sought to maintain an international reputation as a quality finance centre. To achieve this both the Government and the independent Regulator have pursued a policy of requiring substance. For example, there are no shell banks.
- Jersey has licensed TCSPs since 2000 and has required information on the ultimate beneficial ownership of all companies administered, whether incorporated in Jersey or elsewhere, and licenced institutions are required to know the nature of the business undertaken. Thus, while a Panamanian company might be formed without any requirement to identify the ultimate beneficial owner a Jersey TCSP administering such a company is required to know who the ultimate beneficial owner is.
- Jersey companies can only be formed for non-residents through a licensed TCSP and applications to form companies are independently vetted by the Company Registrar and will not be formed if they are to be engaged in any sensitive activities which include tax evasion and aggressive tax avoidance. It is not possible to form shelf companies.

**12. Will you be fully complying with the requirements of the EU's Anti-Money Laundering Directive and its subsequent revisions? If not, could you please precise to what extent do you currently comply with the Directive?**

**Answer**

Jersey pursues a good neighbour policy to the EU and, whilst the Directives of the EU are not binding upon Jersey. In the area of anti-money laundering and countering the financing of terrorism, Jersey has historically implemented the EU Anti-money laundering Directives on a voluntary basis. An example of this is the fact that when evaluated by MONEYVAL in 2015, Jersey was also evaluated against compliance with the 3<sup>rd</sup> Money Laundering Directive of the EU – details of which can be found at the back of the [MONEYVAL Report](#).

As the members of the Committee will be aware, the 4<sup>th</sup> AML Directive of the EU is currently still under amendment in Brussels and until the final text of the Directive is agreed, it is not possible for the Government of Jersey to confirm if it will be implementing all the requirements of the Directive. Once the final text of the amended Directive is available, the Government of Jersey are committed to reviewing that text and determining what approach Jersey will take to the Directive. This review will have particular focus on the actions of other 3<sup>rd</sup> countries to the EU in relation to the Directive and how the final text of the Directive relates to the international standards for AML set by the FATF.

4 May 2017

## ANNEX 1

### **An overview of the laws governing the creation and ongoing regulatory requirements of legal entities and legal arrangements.**

#### LEGAL ENTITIES

The following types of entity are discussed under this heading:

- a) Companies
- b) Partnerships
- c) Foundations
- d) Incorporated Associations and Fidéicomis

#### *General*

Jersey legal entities are regulated by the [Companies \(Jersey\) Law 1991](#) (the “Companies Law”), the [Limited Liability Partnerships \(Jersey\) Law 1997](#) (the “Limited Liability Partnerships Law” or “LLP Law”), the [Separate Limited Partnerships \(Jersey\) Law 2011](#) (the “Separate Limited Partnerships Law” or “SLP Law”), the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#) (the “Incorporated Limited Partnerships Law” or “ILP Law”) and the [Foundations \(Jersey\) Law 2009](#) (the “Foundations Law”).

Companies, foundations, SLPs, ILPs and LLPs all have a separate legal personality under Jersey law.

Under Jersey law, customary law/general partnerships and limited partnerships (LPs) governed by the [Limited Partnership \(Jersey\) Law 1994](#) (the “Limited Partnerships Law” or “LP Law”) do not have separate legal personality. Customary law/general partnerships are therefore discussed in the section on legal arrangements below. However LPs are discussed in this section as, although a legal arrangement, the legal and regulatory environment applying to them is identical to that applied to the other Jersey partnerships with legal personality.

All Jersey companies, limited partnerships (“LPs”), limited liability partnerships (“LLPs”), incorporated liability partnerships (“ILPs”), separate liability partnerships (“SLPs”) and foundations are registered by the [Companies Registry](#).

In addition, the [Control of Borrowing \(Jersey\) Law 1947](#) (the “Control of Borrowing Law” or “COBL”) and the [Control of Borrowing \(Jersey\) Order 1958](#) (the “COBO”), the [Proceeds of Crime \(Jersey\) Law 1999](#) (“Proceeds of Crime Law” or “POCL”), the [Money Laundering Order \(Jersey\) 2008](#) (the “Money Laundering Order” or “MLO”), the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#) (the “Supervisory Bodies Law”), the [Financial Services Commission \(Jersey\) Law 1998](#) (the “Commission Law”) and the [Financial Services Commission \(Financial Penalties\) \(Jersey\) Order 2015](#) (the “Civil Penalties Order”) are relevant for this section.

#### The Control of Borrowing Order Regime

The COBO regime is critical to the JFSC collecting information from legal entities on registration/incorporation and during the lifespan of the legal entity, in particular the

JFSC uses this regime in order to collect ultimate beneficial ownership and control information in accordance with, inter alia, the Money Laundering Order.

In short, the JFSC collects information both under the Companies Law (or relevant partnership law) as well as under the COBO regime. Information collected under the COBO regime mainly relates to information relating to ultimate beneficial owners and controllers of companies and partnerships at the time of registration/incorporation and information relating to activity that the legal entity will undertake. This process enables the Companies Registry to “understand the nature of its business, and its ownership and control structure” (a requirement fulfilling FATF Interpretive Note to Recommendation 10 (CDD)). Such information is vetted for accuracy upon registration incorporation and is required to be kept up to date by the JFSC in cases where those legal entities are owned by Jersey residents or by TCSPs, as required under the Money laundering Order and applicable Registry policies and procedures.

The vetting process involves reviewing it against a number of sources such as the consolidated list of persons subject to sanctions legislation in Jersey, WorldCheck, the UK consolidated sanctions list, Ofac, internet and regulatory databases maintained by the JFSC. As part of its work, the JFSC also considers whether a relevant person that is the TCSP has properly applied CDD measures under the Money Laundering Order, (e.g. has it identified whether the proposed beneficial owner of a company is a PEP).

Accordingly, information is available at the premises of the JFSC and:

- the registered office of the company, foundation or partnership (being limited partnerships, limited liability partnerships, separate limited partnerships or incorporated limited partnerships); or
- the office of the TCSP.

The COBO regime works alongside each of the relevant and applicable legal entity laws.

Under the COBO, the prior consent of the JFSC is required to the:

- Issue of shares or securities by a Jersey company;
- Issue of units by a Jersey law unit trust;
- Issue of partnership interests by a Jersey LLP; and
- Issue of partnership interests by a Jersey LP.

In addition, a consent from the JFSC is also required where a non-Jersey company, unit trust, LP or LLP seeks to raise money in Jersey by the issue of shares, units, or partnership interests (Articles 10-11, COBO). There are also provisions requiring JFSC consent where a register is to be held in Jersey of the shares, securities, units or partnership interests of non-Jersey Companies, unit trusts, LPs or LLPs. The COBO also requires the JFSC’s consent to be obtained prior to the circulation in Jersey of prospectuses offering shares, securities, units or partnership interests of non-Jersey companies, unit trusts, LPs or LLPs. Before granting consent under COBO, the JFSC will wish to be satisfied that doing so will be in accordance with

protecting the integrity of the Island in commercial and financial matters and be in the best economic interests of the Island.

Except in the case of an investment fund, in order to obtain consent a LP/LLP will be required to provide identity information on the general partner(s), as well as on limited partners, with a 10% or more beneficial interest in the partnership; and a LLP will be required to provide identity information on partners with a 10% or more beneficial interest in the partnership. It is a standard condition imposed by the JFSC when granting permission to LPs and LLPs (under COBO) that no prospectus, offering circular, private placement memorandum or anything of a like nature shall be issued thereafter without the JFSC's prior consent.

In the case of LPs, SLPs, ILPs or LLPs that are investment funds, ownership information on these arrangements will be captured by the obligations under the AML regime which are imposed directly on the mutual fund itself (Schedule 2 of the Proceeds of Crime Law: Part A, item 3); and indirectly by the AML regime obligations imposed on Service Providers such as fund services businesses (Schedule 2 of the Proceeds of Crime Law, Part A, item 4) or others participating in or providing services related to securities issues (Schedule 2 of the Proceeds of Crime Law, Part B, item 7(1)(h)).

Jersey unit trusts which seek to issue units (in Jersey or elsewhere), or foreign unit trusts which seek to raise money in Jersey by the issue of units are subject to the COBO regime pursuant to Article 9 of the COBO. A person must seek the consent of the JFSC and provide information on that unit trust.

To obtain the consent of the JFSC, the applicant must advise the name, address, date of birth and occupation of all persons who will have a 10% or greater beneficial interest in the entity. Consent is indicated by the issuing of a COBO license and may be general or specific, and subject to certain conditions. All COBO licenses include a condition that the prior approval of the JFSC must be obtained prior to any person taking a 25% or more beneficial interest in the licensee. Such approval will require the provision of identifying details of that person (name, address, date of birth and occupation). This condition is waived where the licensee is administered by a provider of company administration services regulated pursuant to Article 2(3) of the [Financial Services \(Jersey\) Law 1998](#) (the "Financial Services Law"). This waiver is aimed at reducing duplication as the licensee is a client of a person who, under obligations imposed by the Financial Services Law and the Money Laundering Order, is required to apply customer due diligence measures and to identify and verify the identity of the beneficial owner and controller of the customer.

A person who contravenes a requirement imposed under the COBO shall be liable to imprisonment for up to five years, a fine, or both pursuant to Schedule 1 of the Control of Borrowing Law.

### Recent Changes to the Beneficial Ownership Regime

Jersey is currently in the process of enhancing its regime concerning availability of beneficial ownership and control information. In order to implement this enhanced policy amendments are required to legislation and the regulatory framework including

amended Guidance, amended Handbooks, re-issuance of COBO consents and re-issuance of Registry forms. It should be noted that the majority of companies incorporated in Jersey are private investment companies, whose ownership changes very rarely.

Below is an outline of the general policy and required amendments to the regime:

On 2 March 2016, the Government published a consultation paper concerning Beneficial Ownership of Jersey Companies and a Register of Directors for Jersey<sup>1</sup>. On 2 November 2016, the Government published its Response Paper<sup>2</sup> to the consultation.

Under the previous regime in Jersey, whilst legal ownership information and beneficial ownership information was obtained by the Companies Registry upon incorporation/registration of a legal entity, if there was a subsequent change to beneficial ownership and control information of a legal entity administered by a TCSP, the TCSP was not required to update the central register or seek prior consent from the JFSC concerning such a change.

The Response Paper outlines a policy whereby the process relating to beneficial ownership information post incorporation will change in that all TCSPs must provide information relating to current beneficial ownership that they hold to the Central Register by 30 June 2017 and thereafter upon change of 25% or more (flexed on a Risk Based Approach), TCSPs will be required to notify the Companies Registry within 21 days of knowledge of a change.

In order to compel TCSPs to provide the Companies Registry with the information required on current beneficial ownership relating to existing legal entities, all legal entities have been issued with a replacement COBO consent requiring each legal entity to submit a C17S form (or equivalent depending on the entity applying) informing the Registry of the current beneficial ownership of such entity. The requirement is simple - the JFSC must be notified "of information identifying each beneficial owner or controller known to the [entity] on the date of such notification". Such submission to be made anytime between 1 January 2017 and 30 June 2017. The entity must thereafter notify the JFSC within 21 days of it having knowledge that: "(a) any individual has become a beneficial owner or controller of the Company; or (b) any individual has ceased to be a beneficial owner or controller of the Company; or (c) any beneficial owner or controller of the Company has changed their identity, in such manner as may be specified by the JFSC."

The scope of this regime covers companies, foundations, LLPs, LPs, ILPs and SLPs.

The Government of Jersey and the United Kingdom entered into a reciprocal enhanced information sharing agreement in this regard in April 2016 (the "Exchange

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1

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Beneficial%20Ownership%20of%20Jersey%20Companies%20and%20a%20Register%20of%20Directors%2020160308%20VP.pdf>

2

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/CR%20-%20Beneficial%20Ownership%20of%20Jersey%20Corporate%20and%20Legal%20Entities%20and%20a%20Register%20of%20Directors%20Policy%20Document%2020161101%20VP.pdf>

of Notes”). This reciprocal agreement is due to come into force on 30 June 2017. From 30 June 2017, the Government of Jersey will be able to exchange information requested pursuant to the Exchange of Notes on a normal request within 24 hours and in urgent matters, where, for example terrorism financing is expected, within 1 hour. Jersey is willing to consider entering into a similar agreement with other jurisdictions upon request.

The scope of these changes encompasses all legal entities and legal arrangements registered with the Companies Registry.

Under the new regime, information on beneficial ownership of all legal entities in Jersey will be centralised on the central register (due to the enhanced updating requirement) and this will allow requests to be responded to far quicker, making the regime particularly effective for information exchange.

The changes proposed affect where information is held and not whether information is available in the Island. Presently information is held either in the vetted central register or with the TCSP, or both. The changes will ensure that the adequate, accurate and current information presently available can be accessed from one source, the Central Register, thereby ensuring the more speedy access required by law enforcement authorities.

### Sound Business Practice Policy

The Sound Business Practice Policy<sup>3</sup> sets principles regarding the activities that the JFSC consider sensitive and issued pursuant to the COBO regime to provide enhanced review where a company is conducting a form of business that is considered sensitive. The Sound Business Practice Policy was formed in consultation with Government authorities and the industry.

The function of administering the COBO regime rests with the JFSC by virtue of Article 6(b) (i) of the Commission Law. Consequently, the JFSC’s guiding principles (Article 7 of the Commission Law) are relevant and, in discharging its functions, the JFSC may take into account any matter which it considers appropriate, but shall in particular have regard to:

- the reduction of the risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers;
- the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- the best economic interests of Jersey; and
- the need to counter financial crime both in Jersey and elsewhere.

In addition to the activities listed in the Tables to the Policy, the Policy also states that applicants should also look to ensure that any application is in line with the

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<sup>3</sup> <https://www.jerseyfsc.org/pdf/SBP-Policy-Nov-2014.pdf>

Government statement on abusive tax schemes issued on 29 July 2014<sup>4</sup> and any guidance notes issued by Jersey Finance expanding on the principles advocated in the Government statement. The JFSC and the Registrar will have regard to the Government statement and guidance notes when considering any application.

## Individual entities

### a) Companies

	Live private companies	Live public companies	Live cell companies	Total
As of 31 December 2014	31,376	725	616	32,717
As of 31 December 2015	31,674	748	641	33,063
As of 31 December 2016	30,765	856	636	32,257

A company will be incorporated under the Companies Law and is recorded in a public register held by the Registrar of Companies (the “Registrar”). This records the company name, date of incorporation, legal form and status, and the address of the registered office. The following are also held by the Registrar and available to the public:

- By virtue of Article 7 of the Companies Law, the name and address of each founder and, with respect to public companies, the name, address, nationality, occupation and date of birth of each director at the time of incorporation.
- By virtue of Article 7 of the Companies Law, a copy of the company’s memorandum and articles of association (containing regulating powers);
- By virtue of Article 71 of the Companies Law, the name and address of registered shareholders on 1 January of each year; and
- By virtue of Article 71 of the Companies Law (in the case of a public company, subsidiary of such a company, or company which is deemed to be a public company), the name, address, nationality, occupation and date of birth of every director on 1 January of each year.

Companies may be incorporated with limited or unlimited liability. They may be limited by shares or by guarantee. They may be ‘public’ companies or ‘private’ companies. They may issue shares with and without a “par” value.

The Companies Law, amongst other things, sets out how a company shall be formed, incorporated, and operated. It also sets accounting and auditing requirements and sets out the procedure for winding-up a company. The Companies Law also provides for investigatory powers conferred on the Chief Minister, the Attorney General or the JFSC (as applicable) in order to investigate the affairs of a company in appropriate

<sup>4</sup> <http://www.jerseyfsc.org/pdf/CMD-Abusive-Tax-Statement-20140729.pdf>

circumstances. All companies must prepare annual accounts in accordance with generally accepted accounting principles. Public companies in accordance with Article 105 of the Companies Law must file those accounts with the Registrar (whereupon they may be inspected by a member of the general public).

In exercising its guiding principles set out in Article 7 of the Commission Law and by virtue of its powers conferred to it by the COBL and COBO, the JFSC keeps and publishes a list of sensitive activities, which as a matter of policy, are considered to pose reputational risks to Jersey. Any company wishing to engage in such activities must notify the JFSC in the first instance. This is detailed in the Sound Business Practice Policy of the JFSC issued in November 2014.

In practice where, on an application for the formation of a company, the Registrar is of the opinion that the formation of the company would not be in the public interest, the Registrar must refer the application to the court (Article 8 of the Companies Law) or the JFSC, using its powers under the Control of Borrowing Order, is able to refuse to issue a consent (a COBO consent). Absent consent under the COBO, a body corporate cannot issue any shares (even to the subscribers) and cannot therefore be incorporated. As an alternative to refuse to incorporate, the JFSC may opt to apply conditions to the incorporation. Indeed this has become the norm since it is through this conditioned process that the Registry collects beneficial ownership information upon change of beneficial owner. However, additional and bespoke conditions are also applied (i.e. every COBO consent is issued subject to the condition that the approval of the Commission is sought before any change in beneficial ownership of 25% or more).

Information relating to activities and indeed beneficial ownership is collected by the JFSC on incorporation through the incorporation application forms ([C2A](#) or [C2B](#) forms).

Table A sets out information collected by the Companies Registry, in respect of Companies as part of the ongoing regulatory requirements of legal entities.

Table A

Legal Entity	Publicly available information	Information held by the Registry and/or made accessible to tax authorities (as applicable)
<p>Companies – incorporated under the Companies (Jersey) Law 1991</p>	<ul style="list-style-type: none"> <li>- Registered office</li> <li>- Company registered number</li> <li>- Memorandum and Articles of association.</li> </ul> <p>The memorandum must include the following:</p> <ul style="list-style-type: none"> <li>• The name of the company;</li> <li>• Whether it is a public or private company;</li> <li>• Whether it is a par value company, a no par value company or a guarantee company;</li> <li>• The full name and address of each founder.</li> </ul> <p>The address of the company’s registered office on incorporation.<sup>5</sup> Where a company is to be a public company, the statement shall provide particulars with respect to each director in accordance with Article 7 of the Companies Law</p> <p>Each company must provide an annual return that lists the legal owners of the company as at 1 January each year.<sup>6</sup> On an annual basis, public companies must also provide details of their directors to the Registrar. Where basic information changes the</p>	<ul style="list-style-type: none"> <li>- By virtue of the Control of Borrowing (Jersey) Order 1958, the JFSC requires disclosure of the name, address, date of birth and occupation of each person that is to have a 10% or more beneficial interest in the company (except in the case of an owner that is listed on an IOSCO compliant or regulated market as defined by the Money Laundering (Jersey) Order 2008).</li> <li>- Beneficial owner information is held centrally by Registry and is available to the JFSC and tax authorities. [The Exchange of Notes agreement with UK now means that there is an international commitment to share information via FIU units on non-urgent requests within 24 hours and urgent requests within 1 hour.]</li> </ul> <p>Every company must maintain a register of members and, inter alia, enter into it:</p> <ul style="list-style-type: none"> <li>• The number of shares held by the member;</li> <li>• If the shares are numbered, their numbers; and</li> <li>• If the company has more than one class of shares the class of classes held by the member.<sup>7</sup></li> </ul> <p>A company must also maintain a register of directors in Jersey.<sup>8</sup> The</p>

<sup>5</sup> Please note that Jersey does not have a concept of “registered agent.” Instead, it requires each entity to have a registered office in Jersey (Article 7 of the Companies Law).

<sup>6</sup> Companies Law, Article 71.

<sup>7</sup> Companies Law, Article 41.

<sup>8</sup> Companies Law, Article 83.

	Registrar requires notification of that change at the time of change or as part of an annual return.	register may be inspected by any member (shareholder) of the company, any director, and by the Registrar. In addition, public companies (and subsidiaries of public companies) must make the register of directors open to inspection by any person upon payment of the prescribed fee.
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NOTE: The general public is able to access legislation via [www.jerseylaw.je](http://www.jerseylaw.je). Explanatory information is also available on all types, forms and basic features of legal entities and arrangements. Policies and procedures such as Guidance on information to be provided before registration of a legal person is available on the Registry website: [www.jerseyfsc.com](http://www.jerseyfsc.com). This includes: copies of application forms, including guidance such as the Registry Sound Business Practice Policy and the Registry Processing Statement.

Companies are permitted to have a corporate director that: (i) is a company registered and supervised by the JFSC to provide director services pursuant to the Financial Services Law; and (ii) does not itself have any corporate directors. Otherwise, corporate directors are not permitted. “Nominee” directors are not recognised in legislation.

Companies need to keep their register of shareholders/members up to date at all times. Companies need to provide details to the Registrar on an annual basis to update the publically available register. In accordance with Article 45 of the Companies Law, any person on payment of a fee to the company may inspect the register of members.

In the case of a company that is carrying on business regulated by the JFSC, it is the JFSC’s policy that all directors should be natural persons. This policy position is set out in the JFSCs three licencing policies for: (i) [banking business](#); (ii) [insurance business](#) and (iii) [financial service business](#) that require a registration under the Financial Services Law.

### *Cell companies*

The concept of cell companies was first introduced to Jersey in February 2006. In addition to the widely recognised structure of a protected cell company (“PCCs”), Jersey also introduced a completely new concept – the incorporated cell company (“ICC”). They are both allowed under the Companies Law. The key issue which differentiates both types of cell company from traditional (non-cellular) companies is that they provide a flexible corporate vehicle within which assets and liabilities can be ring-fenced, or segregated, so as only to be available to the creditors and shareholders of each particular cell.

In all respects in terms of obligations and record keeping, each PCC is required to comply with the same legal obligations as outlined above in the Companies section.

In an ICC, the cells are each individual companies and able to hold assets in their own name and therefore each such cell has the same record keeping requirements as outlined by the Companies Law.

A PCC is a single legal entity within which there may be established one or more protected cells. Each protected cell, despite having its own memorandum of association, shareholders and directors, as well as being treated for the purposes of the Companies Law as if it were a company, does not have a separate legal identity from the PCC itself. Accordingly, where a cell wishes to contract with another party, it does so through the PCC acting on its behalf.

In order to ensure that creditors and third parties are aware of this position, a director of a PCC is under a duty to ensure counterparties know or ought reasonably to know that the PCC is acting in respect of a particular cell (Article 127YR Companies Law). A director who fails to notify counterparties to a transaction that the PCC is acting in respect of a particular cell and to reflect this accurately in the minutes of the PCC or protected cell is guilty of an offence under Article 127YR(3) of the Companies Law and punishable with a fine. It should be stressed that a director of a cell does not have any duties or liabilities in respect of the cell company in relation to the cell or any other cell of the cell company by virtue of their directorship of a particular cell (Article 127YDA(5)) and, accordingly, is not entitled to any information in respect of the cell company or the cells to which he is not a director (Article 127YDA(6)).

Under Article 127YDA(1) of the Companies Law, a cell of a PCC shall have the same registered office and secretary as the protected cell company. That registered office must be in Jersey.

A cell of a PCC is created on the day specified in the certificate of recognition in relation to the cell as being the date on which the cell was created.

In contrast, an incorporated cell of an ICC is a completely separate legal entity, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. As a result of Article 127YD(1)(b) of the Companies Law, a cell of an incorporated cell company is a company and treated as such for the purpose of the COBO and application of the Money Laundering (Jersey) Order 2008.

Article 2 of the COBO provides that a body corporate incorporated under the law of Jersey shall not, without the consent of the JFSC:

- for any purpose issue any shares; or
- admit any person to membership otherwise than by reason of the issue or transfer of shares.

The JFSC administers the COBO and considers shares issued by a cell of a PCC to be shares that are issued by a constituent part of a body corporate. Accordingly, at the time that an application is made for a cell to be granted a certificate of recognition under the Companies Law (i.e. to be created), the JFSC will request information on any individual who it is known by the applicant at the time will hold an interest of 10% or more of the shares of the cell before giving its consent under the COBO. The COBO

does not limit the factors that the JFSC may consider in making the decision as to whether or not consent will be given in a specific case. In practice, it expressly asks for information on date of birth, occupation, address, and place of birth of shareholders. Guidance to completing the C2A incorporation application form was last revised on 24 March 2015 to incorporate the three tier test concerning beneficial owners and controllers of the AML/CFT Handbook. This is currently being revised so as to incorporate the requirements set out in the enhanced policy on beneficial ownership.

Article 12 of the COBO further provides that the JFSC may grant its consent subject to conditions. In addition to the initial disclosure, the conditions will include the requirement to seek and obtain the JFSC's prior approval to any subsequent changes to the ownership of that cell. If, however, the cell is provided with any services by a registered trust and company services provider, or the combined effect of all changes to the ownership of the cell is that all individuals hold less than 25% of the shares of the cell, prior approval by the JFSC will not generally be needed. The threshold to be applied is on a risk based approach where a TCSP administers the cell in accordance with AML/CFT requirements. Post incorporation, and on change of beneficial ownership, the Registry reviews the position on a case by case basis generally applying a 25% threshold for the reporting obligation to be triggered.

In addition, the PCC and each cell are required to have a registered office in Jersey (which will be the same address). The provision of a registered office or business address for a company by way of business is a regulated activity pursuant to Schedule 2 of the Proceeds of Crime Law. As such, trust and company services providers are subject to the CDD measures of the Money Laundering Order and, pursuant to Articles 2 and 3, are under an obligation to identify and verify the identity of the beneficial owners and controllers of the PCC. In the case of a PCC, the JFSC considers that this will include information on the cell company and all of its constituent parts (the cells).

The provision of a registered office service is covered in the trust company business sector specific section of the AML/CFT Handbook. Paragraph 57 of that section says that (save where a statutory exemption is available) a relevant person that is to provide an address to a company must collect relevant identification information on the persons who are the beneficial owners and controllers of the company before the time that the address is first provided and then subsequent to provision of that address (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided). As explained above, in the case of a PCC, this will include information on the cell company and all of its constituent parts (the cells).

All records delivered to the Registrar (as distinct from the JFSC) are accessible by the public, including online.

In addition to the beneficial ownership and/or controller information collected in accordance with the requirements outlined in the AML/CFT Handbook, the JFSC (using its powers under COBO) applies a 10% threshold in respect of "ultimate beneficial owners" on incorporation. This policy should be viewed separately to the requirements outlined in the AML/CFT Handbook. The JFSC requires the details of any individuals with a 10% or more interest in the company to be completed on

incorporation. The JFSC's policy in relation to the provision of ultimate beneficial owner details was set, after consultation, prior to the introduction of the amended AML/CFT Codes of Practice in February 2008 and revised most recently in March 2015. The current position is that, inter alia, at the point of incorporation of a Jersey company, up front disclosure of ultimate beneficial owners holding a 10% or more interest is required.

Through the information contained in those records, competent authorities are able to link a legal entity with a specific TCSP, thus locating the party charged with responsibility for ascertaining and assessing beneficial ownership information. In addition, beneficial ownership information will also be provided to the JFSC upon incorporation. With respect to beneficial ownership information maintained by TCSPs, Article 8 of the Supervisory Bodies Law grants the JFSC a wide range of powers to access any information and documentation held by trust and company services providers. Pursuant to the provision, the JFSC may require the production of information, the provision of answers to questions posed, and access to premises. Law enforcement may apply for a court order to access any information and documentation held by the trust and company services provider. The FIU and Comptroller of Taxes may also access information using statutory powers.

#### b) Partnerships

In addition to companies established pursuant to the Companies Law, Jersey law allows for the registration of LLPs (pursuant to the Limited Liability Partnerships Law) and of ILPs (pursuant to the Incorporated Limited Partnerships Law), SLPs (pursuant to the Separate Limited Partnerships Law) as well as LPs (pursuant to the Limited Partnerships Law).

##### *Limited liability partnerships*

In 1997 Jersey enacted a Limited Liability Partnerships Law (with a view to enabling the use of Jersey limited liability structures by professional firms and other partnerships in which the partners take an active management role.

Historically, in order to provide protection to the creditors of Jersey LLPs, the 1997 law required a Jersey LLP to maintain a £5,000,000 bond from a bank or other financial institution, which would pay out on the LLP's insolvency. That requirement proved a barrier to usage and, as a consequence, Jersey LLPs were not previously viewed as an attractive choice of structure and this is why there were so few registered in Jersey.

In 2013, an amendment was made to the LLP Law where the requirement for the £5,000,000 bond was removed. In its place, creditor protection was maintained through the filing by an LLP of an annual solvency statement in a specified form. Withdrawals of LLP property or its value by partners or former partners are (as a general rule) only permitted in circumstances where a solvency statement has been filed in the 12-month period immediately preceding the withdrawal. The solvency statement is a 12-month forward-looking statement, and is similar to the solvency statements already used under the Jersey Companies Law in connection with

distributions. The amendment therefore brings creditor protection for LLPs in line with the provisions that apply to Jersey companies. There are now 26 LLPs registered.

In terms of information on beneficial ownership and control for LLPs, the COBO regime applies and therefore the JFSC hold information on beneficial ownership and control (in the same manner as for Companies) which is capable of being exchanged with tax authorities.

Below is an outline of the LLP regime: -

An LLP in Jersey must have at least two partners (which can include natural persons or corporate or non-corporate bodies) carrying on business with a view to profit. The partners must agree to contribute effort and skill to the LLP business, to share profits and that each partner has an interest in the property of the LLP. There is no requirement for any partners of the LLP to be resident in Jersey but the LLP must be registered and in order for an LLP to create partnership interests, a COBO consent must be obtained from the JFSC.

In an LLP each partner has limited liability and can take part in the management of the LLP. However, an LLP must have at least one "designated partner" who is required under the Limited Liability Partnerships Law to carry out certain administrative functions.

LLPs are registered by submitting a declaration to the Registrar at the JFSC per Article 16 of the Limited Liability Partnerships Law. Amongst other things, the declaration (which is available to the public) must state:

- Its name;
- The address of the registered office of the LLP; and
- The full name and address of each partner (indicating which is to be a designated partner).

The declaration must also set out core details in relation to the LLP, including its name, registered office, intended partners and activities.

As already identified, an LLP is a separate legal person (but not a body corporate) distinct from its partners. Accordingly, an LLP can enter into contracts, own property and sue and be sued in its own name. An LLP is liable for its own debts and losses; in particular, no judgment can be enforced against any LLP property unless that judgment is granted against the LLP (although creditors of a partner may have recourse to that partner's interest in the LLP).

Under the Limited Liability Partnerships Law, an LLP can hold property in its own name, or alternatively property can be held by any person on behalf of the LLP. Subject to the LLP agreement, and as long as there are at least two partners in the LLP, such

property holding arrangements will continue notwithstanding any change in the persons who are partners in the LLP.

A partner (or former partner) in an LLP has limited liability and so will not be liable for the debts or losses of the LLP (including any debt of, or loss caused by the act of, another partner in the LLP), unless the losses are caused by that partner (or former partner). A partner may be liable to return property (including profits) withdrawn by that partner from the LLP in certain situations, including:

- a) if the LLP is unable to pay its debts at the time of such withdrawal, or the LLP becomes unable to pay its debts as a result;
- b) if the withdrawal was made otherwise than in the ordinary course of affairs of the LLP and the LLP became unable to pay its debts within six months; or
- c) if no prescribed "specified solvency statement" is given in the twelve months before the withdrawal, or the specified solvency statement was given without reasonable grounds

Whilst the LLP agreement (if it is in writing) is a private document, the names and addresses of the partners of the LLP must be disclosed to the Registrar on initial registration and by way of an annual declaration (similar to an annual return for a company) in accordance with Article 18(1) of the Limited Liability Partnerships Law and so will be available to the public. The annual declaration must be filed before the end of February of each year and it must state the name and address of every person who, on the 1st January of that year was a partner in the partnership. Failure to submit an annual declaration means that the designated partner is guilty of an offence. No accounts need to be filed in relation to the LLP (unless the Jersey LLP is undertaking certain types of financial service business).

Unless an LLP agreement requires otherwise, it is not necessary for an LLP to appoint an auditor or have its accounts audited. Records must be kept at its registered office. These records include details of the partners, a copy of the registration declaration and other statements delivered to the Registrar (including any specified solvency statements) and a copy of the LLP agreement (if it is in writing). All partners are entitled to inspect the records.

In summary, the Limited Liability Partnership Law deals, amongst other things, with all key matters during the lifecycle of an LLP from registration through to dissolution. Inter alia, it includes provisions relating to the relations of partners with one another and third parties and the liability of the LLP and partners and former partners. Accounting records must be kept that are sufficient to show and explain the partnership's transactions and are such as to disclose with reasonable accuracy the financial position of the partnership. LLPs are owned and managed by their partners.

### *Limited partnerships*

A limited partnership is a partnership between one or more 'general' partners (who manage the partnership) and one or more 'limited' partners (passive investors who have no involvement in the day to day management of the partnership). While general partners have unlimited liability, a limited partner's liability is limited (subject to certain

restrictions) to the difference (if any) between the amount which they have actually contributed to the partnership and the amount they have agreed to contribute to the partnership.

Limited Partnerships are registered with the Registrar under the Limited Partnership (Jersey) Law 1994). The Registrar shall not issue a certificate unless a declaration is signed by each person who, on formation, is to be a general partner. The declaration and certificate issued by the Registrar are publicly available.

In accordance with Article 4 of the Limited Partnership Law, the declaration must include; the name, the intended address of the registered office, the full name and address of each general partner or the place where it is incorporated and its registered or principal office, the term (if any) . Under Article 5 of the Limited Partnership Law, if any change is made or occurs in any of the particulars delivered in the declaration (other than a change in the registered office of the partnership), the nature of the change must be notified to the Registrar within 21 days.

Pursuant to Article 32 of the Limited Partnership Law, a person may inspect a document delivered to the Registrar under the Limited Partnership Law and may require a certificate of the registration of a declaration or a copy certified of any other document or part of any other document delivered to the Registrar under the Limited Partnership Law.

In terms of information on beneficial ownership and control for Limited Partnerships, the COBO regime applies and therefore the JFSC holds information on beneficial ownership and control (in the same manner as for companies) which is capable of being exchanged with tax authorities.

A Jersey limited partnership has the following essential characteristics:

- it does not have its own legal personality separate from its partners;
- it must have at least one limited partner and one general partner who are separate persons;
- a limited partner in a limited partnership has, notwithstanding the nature of his contribution, only the right to demand and receive money in return for his contribution, unless there is a statement to the contrary in the partnership agreement or all the partners in the limited partnership consent to some other manner of returning the contribution;
- a limited partner in a limited partnership has no authority or power to bind the partnership, responsibility for managing the limited partnership rests exclusively with the general partner(s) and limited partnership property must be held by a general partner; no maximum limits on the numbers of partners; no upper limit on the number of limited partners; no requirement that the general partner be Jersey-resident; a general or limited partner may be a corporate body, including

- a limited liability company; accounts may be maintained in any currency (including euro);
- partnership contributions can be made in the form of money, property or other services; and
- no requirement on the general partner to make any capital contribution to the partnership.

Following the delivery of a declaration to the Registrar, a limited partnership will be registered under Article 4 of the Limited Partnerships Law and is recorded in a public register held by the Registrar. Inter alia, the declaration (which is available to the public) must state:

- Its name;
- The address of the registered office in Jersey of the limited partnership; and
- The full name and address of each general partner.

Under Article 5, if any change is made or occurs in any of the particulars delivered in the declaration (other than a change in the registered office of the partnership), the nature of the change must be notified to the Registrar within 21 days.

A limited partnership must keep at its registered office the full name and address of each limited partner who is an individual, or in the case of a body corporate, its full name and place where it is incorporated, and its registered or principal office (see Article 8 of the Limited Partnership Law). The same applies to a SLP and ILP (as detailed below). It is an offence to fail to comply with this requirement punishable by:

- In the case of a limited partnership - a fine not exceeding level 2 on the standard scale (£500) and, in the case of a continuing offence to a further fine not exceeding level 1 (£50) on the standard scale for each day on which the offence so continues. With effect from 20 September 2016, these fines have increased to £1,000 for a level 2 and £200 for a level 1 fine.
- In the case of a SLP and ILP – a fine of level 3 on the standard scale (£5,000). This has now been increased with effect from 20 September 2016 to £10,000.

The Limited Partnerships Law, amongst other things, deals with all key matters during the lifecycle of a partnership from registration through to dissolution. Inter alia, it includes provisions dealing with the rights and obligations of the general partner(s) and liability of limited partners. Accounting records must be kept that are sufficient to show and explain the partnership's transactions and are such as to disclose with reasonable accuracy the financial position of the partnership.

The Limited Partnerships Law retains substantially the customary law of partnerships in Jersey but provides for a category of partner known as a 'limited partner'. Limited partnerships are owned by their partners. Generally, management is by just one of the partners, known as the general partner. A limited partner's liability is limited to the amount of his contribution to the partnership, provided he does not take part in the

management of the partnership. A limited partnership must have at least one general partner and one limited partner and must have a partnership agreement.

### Separate Limited Partnerships and Incorporated Limited Partnerships

In 2011 two new partnership forms were introduced by the Separate Limited Partnerships (Jersey) Law 2011 and the Incorporated Limited Partnerships (Jersey) Law 2011. Save for certain key differences outlined below, the basic structure of the separate limited partnerships (“SLP”) and the incorporated limited partnerships (“ILP”) is very similar to the limited partnership, and provisions outlined above apply. However, unlike LPs, SLPs and ILPs both have distinct legal personality (i.e. both SLPs and ILPs are “persons” distinct from their partners). Accordingly, SLPs and ILPs are, for example, able to contract, hold property, sue and be sued purely in their own name. This is in contrast to LPs which may only do so through their general partner. Aside from this additional feature, SLPs operate in essentially the same way as existing LPs. The general partner of an SLP (but not an ILP) is also able to contract, hold property, sue and be sued on behalf of the partnership like a general partner of an LP if this is preferred.

In accordance with Article 4 of the Separate Limited Partnerships Law and Article 4 of the Incorporated Limited Partnerships Law, a declaration on registration must be submitted to the Registrar and this shall include: the name, the intended address, the full name and address of each general partner that is an individual or, in the case of a general partner who is a body corporate, the place where it is incorporated and its registered or principal office, the term for an Separate Limited Partnership (if any) and for an Incorporated Limited Partnership that a partnership agreement has been executed. The declaration and certificate issued by the Registrar are publicly available.

Pursuant to Article 36 of the Separate Limited Partnership Law and Article 29 of the Incorporated Limited Partnership Law, a person may inspect a document delivered to the Registrar and may require a certificate of the registration of a declaration or a copy certified of any other document or part of any other document delivered to the Registrar under the Separate Limited Partnership Law or Incorporated Limited Partnership Law (as applicable)

In terms of information on beneficial ownership and control for SLPs and ILPs, the COBO regime applies and therefore the JFSC holds information on beneficial ownership and control (in the same manner as for Companies) which is capable of being exchanged with tax authorities.

### SLPs

An SLP must have at least one general partner and one limited partner. An SLP is required to have a partnership agreement although this will not be publicly available. An SLP may be formed for any lawful purpose. A declaration must be filed with the Jersey Registrar in order to establish the SLP. These are substantially the same requirements as for limited partnerships and it will simply be a matter for the partners to decide to register under the LP Law or the SLP Law, depending on whether they wish the limited partnership to have its own legal personality or not.

The SLP is a "legal person/entity" without being a body corporate and will be able to transact, hold rights, assume obligations and sue and be sued either in its own name or in the name of its general partner. SLPs have unlimited capacity under the SLP law. The ultra vires doctrine does not apply and the SLP can do anything which a natural person can do.

## ILPs

ILPs established in Jersey are body corporates whilst retaining core partnership characteristics. Unique features of Jersey ILPs include the following:

- a) ILPs have perpetual succession (that is to say that an ILP continues to exist irrespective of the fate of its partners).
- b) The dissolution of ILPs is governed by more detailed winding up and insolvency provisions similar to those applicable to Jersey companies.
- c) The general partner of an ILP acts as an agent of the limited partnership (rather than as a partner of the partnership) and owes statutory fiduciary duties to the ILP similar to those a director owes to a Jersey company - for example, a general partner of an ILP is required to act honestly and in good faith with a view to the best interests of the ILP. The general partner also owes the usual duties directly to the limited partners of the ILP.
- d) The general partner of an ILP is only responsible for the debts and other obligations/liabilities of the ILP after the partnership itself has defaulted. This is in contrast to the position in respect of general partners of LPs and SLPs, which have unconditional unlimited personal liability for the debts and other obligations/liabilities of the partnership (although in practice the unlimited liability of the general partner is usually dealt with by having another LP or a limited liability company as the general partner).
- e) Foundations

A foundation will be incorporated under the Foundations Law which entered into force in July 2009. Foundations are neither a company nor a trust but have some similarities to both. They are a distinct and independent legal entity created for a particular purpose and are, in effect, a purpose entity without shareholders and with or without beneficiaries.

However, a foundation resembles a company in that it is a body corporate (albeit one without shareholders) and is governed by a council in accordance with its charter and regulations in much the same way that a company is managed by its board of directors. It is akin to a trust in that a foundation must have one or more objects which may be a purpose (charitable or non-charitable) and/or be for the benefit of one or more beneficiaries. Although it shares these characteristics, and as stated above, it is neither a company nor a trust: it is best described as a distinct legal structure which

has been introduced to serve different purposes. Some of the key features of a Jersey foundation are set out below:

- They appeal to and are readily understood by those from a civil law background.
- They have legal personality and may contract or sue, in their own name.
- There is no segregation of legal and beneficial title, as with a trust.
- The founder can restrict the flow of information regarding the foundation and its property to the beneficiaries.
- They require registration.

A Jersey foundation is capable of exercising all the functions of an incorporated body, save that it cannot directly acquire, hold or dispose of Jersey immovable property, nor engage in commercial trading activities unless such activities are incidental to the attainment of its purpose.

The person who calls for the foundation to be incorporated is known as the “founder” who may be (but does not have to be) a council member and/or a beneficiary under the foundation. However, only a Qualified Person (a “Qualified Person”/“Qualified Member” for the purposes of the Foundations Law is someone who is registered with the JFSC to carry on trust company business) can actually apply for the incorporation of a foundation, although a founder can instruct a Qualified Person to apply on the founder’s behalf.

On incorporation, the Qualified Person submits the charter and a Qualified Person’s certificate to the JFSC for incorporation. The Qualified Person’s certificate must confirm that:

- the Qualified Person will become the Qualified Member on incorporation;
- the Qualified Person is in possession of the regulations and that they have been approved by the Qualified Person and the founder;
- the address stated in the certificate is the correct business address in Jersey of the Qualified Person; and
- a person has been selected to be the guardian of the foundation on incorporation in accordance with the regulations.

The JFSC can refuse incorporation if the proposed objects (which may be charitable and/or non-charitable and/or for the benefit of one or more beneficiaries) are unlawful.

The Foundation is not subject to the COBO regime. However Beneficial Ownership and Control information is required to be held by the Foundation Council and all members of the Council are required, by virtue of the Foundations Law, to ensure the Council holds records, which includes beneficial ownership and control information. As described above, the Qualified Member (who is a member of the Council) must be regulated and supervised by the JFSC, and have a business address in Jersey, which provides the JFSC with supervisory oversight and the ability to obtain information on beneficial ownership and control.

Foundations are recorded in a public register held by the Registrar, which records the foundation's name, date of incorporation and its registration number, and the name and address of the Qualified Member. Under Article 40, the foundation's charter is filed with the Registrar and is open to public inspection. It contains certain required information such as the name of the foundation, its objects, and details of any initial endowment of the foundation. Other information can be included in the charter if desired, but is not required.

The Foundations Law, amongst other things, provides for the incorporation, administration, and winding-up of foundations. The incorporation of a Jersey foundation is an activity regulated under the Financial Services Law, so that only a person who is appropriately licensed under that law can apply for the incorporation of a foundation (as outlined above).

The Foundations Law requires a foundation to have a charter and regulations, explaining the rights of beneficiaries, and the role of the council. Every foundation will have a council to organise its affairs with similar functions and duties to directors of a company.

The foundation's regulations are private. They must provide for the appointment, replacement and remuneration (if any) of its council members, how the council should operate and for the appointment and continuance of a guardian. The regulations may provide for any other matter, for example, in relation to powers, duties, and rights of the council and the beneficiaries. One or more of the members of the council must be a "qualified member". A foundation must have a guardian, charged with taking such steps as are reasonable in all the circumstances to ensure that the council carries out its function.

The founder of a foundation is the person (who may be an individual or a body corporate) who instructs a qualified person to apply for the incorporation of the foundation, regardless of whether or not that person donates any assets to the foundation. A person who donates assets to the foundation after incorporation will not be regarded as a founder, unless the regulations of the foundation provide otherwise.

As already highlighted, the Qualified Member must be a person licensed to act as a council member of foundations under the relevant provisions applying to trust company business pursuant to the Financial Services Law. The business address in Jersey of the Qualified Member will become the business address of the foundation in the Island. Statutory and financial books and records must be maintained at the business address of the foundation and must be sufficient to show and explain the foundation's transactions and disclose with reasonable accuracy its financial position.

In terms of enforcement, the Royal Court of Jersey has been given extensive powers by the Foundations Law to ensure that a foundation complies with all and any

requirements and obligations found in the Foundations Law, its charter or its regulations. Those powers include:

- the power to order amendment of a charter or regulations;
- the power to give directions;
- the power to protect the interest of minors and unborn beneficiaries under a foundation; and
- the power to dismiss and appoint a Qualified Member.

The Royal Court has confirmed that it will construe these statutory powers widely and in a manner which is equivalent to the Court's general supervisory jurisdiction in relation to trusts (see *In re. A Limited* [2013] JRC 075).

<p>Foundations - set up under the Foundations Law</p>	<p>An application to incorporate a foundation must be accompanied by a copy of the proposed charter.</p> <p>The Charter</p> <p>The charter must state:</p> <ul style="list-style-type: none"> <li>• the name of the foundation (which must end with the word 'Foundation' or its equivalent in a different language) which must not be misleading or otherwise undesirable;</li> <li>• the lawful object(s) of the foundation;</li> <li>• information regarding winding up, dissolution and the term of the foundation; and</li> <li>• details of the initial endowment (if there is one) and if appropriate a statement that it may be endowed further.</li> </ul> <p>The charter may state:</p> <ul style="list-style-type: none"> <li>• the name(s) of the members of the first council;</li> <li>• any provisions regarding the amendment of the charter; and</li> <li>• anything which must or may appear in the regulations.</li> </ul> <p>A foundation must notify the Registrar of any amendment to the charter (excluding subsequent changes to members of the council). The charter and register are publicly available.</p> <p>Regulations (voluntary filing)</p> <p>A foundation may, if it wishes, have regulations regarding its administration and how its objects are to be carried out. There is no requirement to file the regulations in the public register. However, sizeable charitable purpose foundation generally request that</p>
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	<p>regulations are placed in the public domain voluntarily or in the alternative, they request to dispense with the separate charter and regulations and simply merge their provisions together into a single publicly available document.</p> <p>The Foundations Law provides that regulations of a foundation must:</p> <ul style="list-style-type: none"> <li>• establish a council;</li> <li>• provide for the retirement, appointment, removal and remuneration of council members;</li> <li>• set out how decisions are to be made by the council;</li> <li>• set out what decisions (if any) need approval from a separate person and the identity of that person;</li> <li>• include provisions relating to the appointment of a guardian; and</li> <li>• include provisions relating to the retirement, appointment and remuneration of the guardian.</li> </ul>
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#### d) Incorporated Associations and Fidéicommiss

Fidéicommiss and incorporated associations are trusts and associations with legal personality that are permitted to hold immovable property. They are incorporated by an Act of the Royal Court pursuant to the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations and recorded in a register held by the Judicial Greffe. The Loi provides for trusts of immovable property falling within 4 categories: i) those for objects of public utility, ii) those for commercial or industrial associations, benevolent and cultural and sporting associations, iii) those for the purpose of furthering the Anglican Church or any other religion, iv) those establishing schools and places of education (Article 1). An association may be incorporated under the same categories i) to iv) above as apply to the creation of trusts ('fidéicommiss').

There are approximately 240 incorporated associations registered with the Judicial Greffe, of which all but four have a local focus – one of the four has a part local and part international focus being Durrell Wildlife Conservation Trust. The incorporated associations are established for the same restricted purposes within Article 1 of the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations but the vast majority (71%) can be classified as having a purpose of either social services, sport or community projects. The types of bodies included within these three categories include seven bowls clubs, ten local football clubs, the Jersey Consumer Council (a consumer rights advocacy association), the Jersey Sea Cadet Corps (a maritime youth charity), the National Trust for Jersey (a heritage association) and the Jersey Battle of Flowers Association (the organiser of the annual Battle of Flowers parade).

These arrangements were not referred to in previous reports on Jersey as they were not considered to have any tax consequences, being used by local residents for predominantly local charitable activities. As they were specifically referred to for AML purposes in Jersey's Moneyval/FATF report however, they are therefore included in this report for information.

## LEGAL ARRANGEMENTS

Two types of legal arrangement are discussed under this heading:

- a) Trusts
- b) General partnerships/common law partnerships

### a) Trusts

Jersey trusts law comprises both the [Trusts \(Jersey\) Law 1984](#) (the "Trusts Law"), as amended from time to time, and Jersey customary law of trusts. The Trusts Law is not a codification or complete statement of the Jersey law of trusts, and this is expressly provided for at Article 1(2), where it states: "This Law shall not be construed as a codification of laws regarding trusts, trustees and persons interested under trusts." Jersey's trust legislation is supported by a body of case-law from the Island's courts. Foreign trusts are governed by trusts laws from their jurisdictions. They are non-enforceable if they are contrary to Jersey law or if they confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Jersey, or to the extent that the court declares that they are immoral or contrary to public policy or if they apply directly to immovable property situated in Jersey (Article 49).

Trusts are able to be formed in Jersey either by a settlor appointing a trustee acting in a private capacity, often for family or personal arrangements or, alternatively, by appointing a professional trustee (often referred to as a TCSP acting "by way of business". In Jersey, trusts are almost in their entirety administered by TCSPs. TCSPs are required to be licensed, regulated and supervised by the JFSC and are required to comply with the relevant legislation, codes and guidance concerning AML/CFT and particularly obtaining beneficial owner and controller information.

Trusts are not subject to registration requirements under customary law or the Trusts Law. Beneficial ownership or control information is kept by the JFSC to the extent that a trust is involved in the ownership and control of a Jersey legal entity.

A trust may be established under Jersey Law without having a nexus with Jersey, i.e. without Jersey settlor, beneficiary or trustees. In such cases, information would not be available unless the trust was administered in the island.

A trust under Jersey law is a legal arrangement whereby a person (settlor) transfers assets or property to another person (trustee), who holds legal title to those assets not in his own right but (1) for the benefit of another whether or not yet ascertained or in existence or (2) for any purpose which is not for the benefit only of the trustee or (3) for both.

A trust established under Jersey law is administered by the trustee in accordance with the provisions of the trust instrument and the Trusts Law. The performance of a trustee's duties is enforced by the Royal Court of Jersey. A Jersey trust must have at least one trustee, but is not subject to any maximum under the law. A Jersey trust may have non Jersey individuals or entities as trustees and Jersey regulation of that non-resident trustee will only apply if it carries on or solicits business in Jersey.

Jersey courts have jurisdiction in all cases where the trust is a Jersey trust. In the case of a foreign trust, they have jurisdiction in three cases: a) when a trustee of a foreign trust is resident in Jersey (e.g. if it is a company incorporated in Jersey), b) where any trust property of a foreign trust is situated in Jersey or c) when the administration of any trust property of a foreign trust is carried on in Jersey. However, in Jersey, as in England and elsewhere, the court may decline to exercise its jurisdiction through the operation of the doctrine known as *forum non conveniens*, where it is satisfied that there is some other available forum, having competent jurisdiction, which is the most appropriate forum for the trial of the action.

Jersey trust legislation sets out specific provisions allowing a settlor to have reserved to himself or to grant to a third party certain powers, (which may include the right to amend or revoke the trust terms, to give binding instructions with respect to management of the trust property, to appoint or remove trustees, beneficiaries, enforcers, and protectors, to change the law of the trust) which shall not, of itself, affect the validity of a trust or delay the trust taking effect. Trusts are generally created by a private document to which the settlor and the trustees are the only parties. The trust instrument does not have to be filed with any public body in Jersey. Beneficiaries of a trust may be entitled to certain information regarding the trust. Trustees are required to disclose to beneficiaries any document which relates to, or forms part of the accounts of the trust.

The Jersey courts will make a determination, dependent on the facts of a particular case, as to whether they would grant a beneficiary of a trust the right to see letters of wishes, as trustees are not obliged to disclose to beneficiaries their reasons for exercising their discretionary power.

Trustees are under a duty to treat information relating to the trust confidentially, the principal exception to this duty being if they are subject to an order of the court in Jersey or if they are required to disclose information to authorities pursuant to law.

The instructions from the settlor to the trustee as to the disposition of trust assets are normally contained in a document named the trust instrument. In addition to the trust instrument it is also common for a settlor to indicate to the trustee his wishes as to the management and disposition of the trust fund in a less formal manner - in a letter of wishes - which, although not legally binding, will generally be considered by the trustee to be of persuasive effect when performing his duties.

In addition to these documents are "Trust minutes" whose purpose is to document a meeting of the trustees and the decisions made by the trustees at the meeting. Under Jersey law, trustees are generally also permitted to document decisions by way of written resolutions. There are no prescriptive legal requirements with respect to the form trustees' minutes must take and the content that minutes must include. While

there is no legal form that trust minutes must take, the content of how Trustees minute decisions should have constant reference to the framework of the Trusts Law and obligations placed upon them therein. Trustees are able to implement an approach that they consider appropriate.

Under both the customary law and the Trusts Law, one of the substantive requirements for the creation of a trust is certainty as to the identity of the beneficiaries of the trust. Accordingly, if a person cannot be identified by name or ascertained by reference in one of only two ways, then he or she cannot be a beneficiary of a Jersey trust. In addition, a trustee may commit a breach of trust if he makes a distribution to anyone that is not a beneficiary of the trust. As well as these identification requirements, Article 21(5) of the Trusts Law imposes an express obligation on the trustee to keep accurate accounts and records of his or her trusteeship, including information on the settlor, protector, beneficiaries, persons who are the object of a power, and co-trustees. Equally, records are also required to be kept by a trustee under the Taxation (Accounting Records) (Jersey) Regulations 2013. Failure to keep up to date, full and accurate records could lead to prosecution.

During the process of the MONEYVAL review of Jersey, the authorities looked to quantify the make-up of trusts administered in Jersey at para 1069 of the MONEYVAL report. It was estimated that the TCSP industry in Jersey administers in the region of 75,000 entities<sup>9</sup>. In comparison, the Comptroller of Taxes is aware of approximately 700 trusts that have a settlor or at least one beneficiary of the trust being resident in Jersey, of which around 150 can be said to relate to family arrangements. It can therefore be accurately concluded that the vast majority of the trusts in Jersey involve a professional TCSP and therefore are subject to the full regulatory regime. Despite this conclusion, in 2016, Jersey amended Schedule 2 of the Proceeds of Crime Law to ensure that all trustees are required to comply with the relevant parts of the Money Laundering Order regarding obtaining information on beneficial ownership and control of Jersey trusts.

#### b) Customary law/general partnerships/general partnerships

General partnership law in Jersey is a matter of customary law and is not governed by a specific statute. As a matter of Jersey customary law, each partner of a customary law/general partnership must know all of the other partners (i.e. beneficial owners), otherwise there cannot be a 'meeting of minds' (one of the essential requirements in respect of the creation of a partnership contract). Customary law/general partnerships are owned by their partners. Generally, management is by all of the partners, though this may be delegated to a management committee. The constitution normally consists of a partnership agreement. Customary law/general partnerships in Jersey are typically used by those carrying out local Jersey businesses. They are used in particular by Jersey lawyers and general medical practitioners and, to a lesser extent, by accountants and other Jersey trading businesses.

In order to practice Jersey law, a Jersey lawyer (Jersey Advocate or Solicitor under the Advocates and Solicitors (Jersey) Law 1997) must either be established in

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<sup>9</sup> Based on data reported annually to the JFSC: 75,000 entities administered of which estimated 1:2 ratio of trusts to companies.

partnership with other Jersey lawyers or be a sole practitioner. There are approximately 20 law firms in the Island practicing as customary law/general partnerships.

Many general medical practitioners in the Island also practice in a customary law partnership. The insular authorities are aware that there are approximately 20 such partnerships in the Island.

General partnerships are not subject to any registration requirements under customary law with the Registrar. From information held within the Taxes Office from tax returns, the authorities are of the view that there are approximately 250 customary law/general partnerships operating in Jersey.

## OTHER RELEVANT LEGISLATION AND CODES OF PRACTICE

Other relevant legislation includes:

- The Control of Borrowing Regime

The COBO regime is critical to the JFSC collecting information on incorporation and during the lifespan of a legal entity, in particular the JFSC uses this regime in order to collect ultimate beneficial ownership and control information in accordance with, inter alia, the Money Laundering Order. More detail is provided in the answer to question 4 of the questionnaire.

- Taxation (Accounting Records) (Jersey) Regulations 2013

The [Taxation \(Accounting Records\) \(Jersey\) Regulations 2013](#) (the “Accounting Regulations”) require every legal or natural person that is in receipt or possession of any income or of any profits arising from the carrying on of a business or letting of a property is required to make and keep adequate accounting records (Regulation 2(1)). The accounting records must be supported by relevant underlying documentation, such as invoices, receipts, certificates and vouchers (Regulation 3), and all records must be maintained for a minimum period of six years (Regulation 4(1)). These obligations apply regardless of whether the person is required to file a Jersey tax return (Regulation 2(2)) and whether the information is held in the Island.

- Control of Housing and Work (Jersey) Law 2012

Any person that carries on a trade, profession or business in Jersey is required to obtain a licence from the States of Jersey’s Population Office under Article 25 of the [Control of Housing and Work \(Jersey\) Law 2012](#) (the “Control of Housing Law”). Licence holders must report every six months to the Population Office on their staffing levels and continued existence.

An application must be made to the Population Office using a prescribed Application for a Business Licence form, which requires details of all ultimate beneficial owners of the person to be identified. Ultimate beneficial ownership is defined in the application form as “a person who has a substantial and active interest in the running of the

undertaking". It is an offence to knowingly or recklessly provide any information that is false or misleading (Article 45). Significant changes in beneficial ownership must be notified to the Population Office within 60 days of the change (Regulation 25(3(b))). A significant change is one where a non-resident acquires an interest of 40% or more in the person (Article 25(4)(b) for companies with share capital and the [Control of Housing and Work \(Jersey\) Law 2012: Guidance – Control Provisions](#) for other entities or arrangements).

- Proceeds of Crime (Jersey) Law 1999

The Proceeds of Crime Law is the main piece of legislation relevant to AML provisions. The Proceeds of Crime Law includes provision for the making of the Money Laundering Order (described below) and provides for the entities who must comply with AML/CFT obligations in Schedule 2. More detail is provided in the answer to question 5.

- Money Laundering (Jersey) Order 2008

The MLO provides for various requirements related to the AML regime including the requirements for Client Due Diligence. More detail is provided in question 5.

- Proceeds of Crime (Supervisory Bodies) (Jersey) Law 1999

The Supervisory Bodies Law makes provision for the supervision of compliance by certain businesses with the AML/CFT regime. In practice the Law appoints the JFSC as the supervisor of AML/CFT for all bodies covered by AML/CFT supervision in Jersey.

- Financial Services Commission (Jersey) Law 1998

The Commission Law establishes the JFSC and sets out the governing framework within which the JFSC must operate. Of particular note are the guiding principles set out in Article 7 of the Commission Law:

*"In exercising any of its functions the Commission may take into account any matter which it considers appropriate, but shall in particular have regard to –*

- (a) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;*
- (b) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;*
- (c) the best economic interests of Jersey; and*
- (d) the need to counter financial crime both in Jersey and elsewhere."*

- Financial Services Commission (Financial Penalties) (Jersey) Order 2015

By virtue of the Civil Penalties Order introduced in 2015, the JFSC has the power to impose civil (financial) penalties for specified registered persons who repeatedly and seriously breach the Codes of Practice. The JFSC may now impose penalties on

registered persons up to the maximum level set out in the Schedule to the Civil Penalties Order applying the appropriate band of penalty, determined according to the nature of the contravention.

### Regulated business activities

In Jersey, some activities within the financial services, banking, insurance, and investment fund sectors are regulated and may only be carried on by a licence holder, subject to certain exemptions. Persons who carry on business conducting these activities are referred to herein as “Regulated Businesses”. Regulated Businesses are required under the Money Laundering (Jersey) Order to maintain relevant identity and ownership information in respect of their clients, as well as to maintain sufficient client records to enable them to reconstruct transactions.

The following activities are regulated and supervised by the JFSC (Regulated Businesses) when a person acts by way of business and carries on the following:

- deposit-taking;
- insurance business;
- investment business;
- fund services business;
- trust company business (involving the provision of company administration services, trustee or fiduciary services, or provision of services to foundations);
- general insurance mediation business; and
- money service business (bureaux de change and money transmitters)

The phrase “by way of business” is also used to determine inter alia whether a person may be subject to Jersey’s AML regime which is described below. While there is no definition in Jersey’s statutes on the meaning of “by way of business”, this will be broadly interpreted to include any person acting with a view to obtain a reward, fees, or benefits of any kind and, holding himself out as willing to provide such services for one or more companies. The term would also cover “one off” contracts on a self-employed basis.

As at 30 September 2016, Regulated Businesses included collective investment functionaries (13), fund services business (477), AIF services business (76), insurance (335) TCSPs (858), investment licences (86), money services business (38) and banks (30).

Jersey’s regulatory regime for Regulated Businesses is overseen by the JFSC which considers initial licence applications and has an ongoing review mechanism which includes powers to require information to be produced and to conduct on-site and off-site examinations of Regulated Businesses. The JFSC also has the power to set licence conditions, issue directions, appoint a manager or revoke the licence of a Regulated Business. These powers are contained in the “four regulatory laws” listed below. The Registry area of the JFSC also manages the various registers which are

required by law to be maintained by a Registrar, for example in respect of companies, limited partnerships and foundations.

Regulated Businesses are governed by one of the four regulatory laws:

- [Banking Business \(Jersey\) Law 1991](#) (the “Banking Business Law”);
- [Collective Investment Funds \(Jersey\) Law 1988](#) (the “Collective Investment Funds Law”);
- [Financial Services \(Jersey\) Law 1998](#) (the “Financial Services Law”); and
- [Insurance Business \(Jersey\) Law 1996](#) (the “Insurance Business Law”).

These laws are supplemented by orders which create binding obligations as well as Codes of Practice. The regulatory effect of the Codes of Practice is to establish sound principles for the conduct of business and, if the JFSC has reason to believe that a registered person has failed to follow a Code of Practice it may take regulatory action including revoking registration or to issue a public statement. Regulatory action aside, Article 19(3) of the Financial Services Law says that “failure to follow a Code of Practice issued under this Article shall not of itself render any person liable to proceedings of any kind, or invalidate any transaction”. However, Article 19(4) of the Financial Services Law provides that: “any Code of Practice issued under this Article shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question.”

Similar provisions concerning the binding nature of Codes of Practice and their admissibility are included in the other regulatory laws.

Whilst the obligations created by the four regulatory laws, and their accompanying orders vary according to the relevant sector, there are some general themes in respect of the obligations imposed on licenses which are set out below.

Licensing requires that applicants and licensees be “fit and proper” persons with satisfactory competence, financial standing and employees to undertake the proposed business. The JFSC is empowered to issue directions to licensees if, for example, it is of the view that registration requirements are not being satisfied, or that it is in the best interests of a person who has an interest in the conduct of that business. A direction may impose a prohibition or restriction on a license, in respect of a particular transaction or generally in respect of the licensee, and may also require the removal of any principal person involved with the carrying on of the licensed business. The JFSC may also seek a court injunction to prevent a person from committing or continuing to commit a contravention of a license condition or a direction. The JFSC may also publish public notices concerning the licensee, or with the approval of a Court, place a licensee’s business under supervision.

Upon application for a license, an applicant must provide the following information to the JFSC:

- name, and address of the licensee’s registered office;
- licensee’s principal place of business, if different; and

- details of the licensee’s ownership structure, including:
  - in respect of a company, identifying any nominee shareholders and setting out a “detailed group ownership structure chart” in all cases where ownership is not by way of direct ownership by natural persons;
  - in respect of licensees owned by a trust, a copy of the trust deed, and identification of the beneficiaries as well as any persons who control or exercise significant influence over the trust.

There is no requirement that the registered office of the licensee is in Jersey, although where the licensee is a Jersey company or partnership, obligations in respect of registered offices under the laws governing those entities will apply – namely that the registered office must be in Jersey. A licensee must seek the consent of the JFSC of a change to a “principal” or “key” person in the licensee’s business, as well as changes to shareholdings when certain ownership thresholds are affected (for example, exceeding or falling below a 25%, 33% or 50% holding).

The Codes of Practice issued by the JFSC include specific references to identity and ownership obligations for each licensed industry sector, including concerning trust company businesses (see response to question 29 below), and in respect of banking businesses (see response to question 49 below).

Some activities which would otherwise be governed by the four regulatory laws have been specifically exempted from licensing. These exemptions are set out in the four regulatory laws (see for example, Schedule 2 to the Financial Services Law and Article 3(2) of the Banking Business Law) and may also be exempted by way of an Order made by the Minister for Economic Development, or a Regulation. There are more exemptions in respect of Regulated Businesses than in respect of the anti-money laundering regime. That is, a person providing financial services may not be a Regulated Business but may still be subject to the anti-money laundering regime.

**Annex 2 - A processing map of the incorporation process**

