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# Latest changes to Jersey's anti-money laundering regime

## Briefing

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Jersey's anti-money laundering and anti-terrorism regime has recently been revised in advance of the International Monetary Fund visit currently scheduled for October 2008. Throughout 2007, in anticipation of the new risk-based approach, Jersey-based financial institutions have been risk-assessing all parts of their businesses and introducing revised anti-money laundering (AML) policies and procedures. Below we look at the changes introduced and the new risk-based approach.

The Proceeds of Crime (Jersey) Law 1999 (as amended) and the new Money Laundering (Jersey) Order 2008 ("the Money Laundering Order"), together with the Terrorism (Jersey) Law 2002, are at the cornerstone of the Island's fight against money laundering and terrorist financing. Further to the new Money Laundering Order, the Jersey Financial Services Commission has issued the Handbook for the Prevention and Detection of Money Laundering and Terrorist Financing to serve as guidance on best practice for those in the finance industry to ensure compliance with the Money Laundering Order.

### The Money Laundering Order

The Money Laundering Order came into force on 4 February 2008. The important changes to be aware of are:

- Article 3: customer identification procedures shall include an assessment at the outset of the risk that any business relationship or one-off transaction will involve money laundering, including obtaining appropriate information for assessing that risk, and also include scrutiny of future transactions to ensure that such transactions are consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile.
- Article 7: in addition to the money laundering reporting officer, regulated institutions are now required to have a money laundering compliance officer, reporting to the institution's governing board, appointed to ensure full compliance with AML legislation in the conduct of all regulated business.
- Article 11: appropriate policies for the application of due diligence, record-keeping and reporting procedures must be maintained having regard to the degree of risk of money laundering and taking into account the type of customers, business relationships, products or transactions with which the institution's business is concerned. This shall include systems for monitoring and testing the effectiveness of anti-money laundering procedures. Enhanced staff training is required not only in respect of the AML legislation governing the institution's business but also to enable staff to identify what amounts to reasonable grounds to suspect money laundering.
- Article 13(1), 19 & 20: customer identification procedures shall be complied with before the establishment of a business relationship or carrying out a one-off transaction. There are two limited exceptions: (1) where to do so would interrupt the normal conduct of business and there is little risk of money laundering occurring; or (2) where the transaction involves less than €15,000 in respect of "a non-money service business" or less than €5,000 in respect of "a money service business". Records concerning customers' identities shall be kept for at least five years after the relationship has ended or the one-off transaction has been completed.
- Article 15: enhanced customer due diligence procedures are required where the risk of money laundering is higher than usual e.g. where the customer is a politically exposed person, or where the customer is not physically present for identification purposes (as is often the case offshore).

- Article 21: procedures are to be maintained for the internal and external reporting of information in the course of conducting financial services business where that information gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering.

### **Proceeds of Crime Law**

In addition, the States of Jersey have now approved an amendment to the Proceeds of Crime Law, requiring anyone knowing or suspecting that another person is engaged in money laundering, based on information or knowledge that has come to the person's attention during the course of his trade, profession, business or employment, to file a suspicious activity report with the police as soon as reasonably practicable after the matter comes to his attention. The penalty for failing to comply with this duty will be up to 5 years' imprisonment and/or a fine. This brings the Proceeds of Crime Law into line with the Terrorism Law.

### **The Risk-Based Approach**

AML policies and procedures must be designed and maintained with specific reference to the risks to which the regulated person is exposed in conducting its business. This new risk-based approach is aimed at providing for flexibility, ensuring financial institutions identify and understand the risks associated with undertaking their particular businesses. It is also aimed at allowing the costs associated with maintaining AML policies and procedures to be more directly proportionate to the risk exposure itself.

However, together with flexibility there will come regulatory visits focussing on the appropriateness and adequacy of institutions' policies and procedures, including how such policies and procedures have in fact been maintained and how successful they have been. To this end the Commission has established an AML Unit, with inspection visits scheduled to commence later this year. There remains some nervousness as to how the Commission will respond to suspected deficiencies in an institution's AML risk-management systems.

The conviction in 2006 of Caversham Fiduciary Services Limited and Others for failing to maintain its

systems, designed to forestall and prevent money laundering, sent a shockwave through the finance industry in Jersey. Those involved failed to verify the identity of the customer and failed to query the rationale for various payments. Fines totalling £65,000 were imposed on the companies concerned and the director responsible £35,000. The Court of Appeal ruled that a one-off failure to verify a customer was sufficient evidence of a failure to maintain, or keep in good order, AML systems. However, note that it is a defence to such a prosecution to prove that all reasonable steps and due diligence were carried out to avoid committing the offence.

### **And Finally**

Recent revisions to Jersey's AML regime, as outlined above, will serve to enhance Jersey's international reputation as a leading, well-regulated jurisdiction in which to conduct business. Meanwhile, however, institutions continue to grapple with the risk-based approach and managing their AML risks, as well as the unavoidable increased compliance costs of doing business. It is also noteworthy that there is a potential serious flaw to the new approach: its effectiveness is, of course, wholly reliant on the ability and commitment of regulated persons and their employees at all times to identify and understand the risks to which the business is exposed.

**This briefing can only provide a general review of this area. Legal advice should be taken with regard to individual circumstances.**

**If you have any queries regarding the information in this briefing or simply wish to discuss your specific needs please contact:**

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