

UPDATE

What is the revised scope of Jersey's AML/CFT/CPF Regime and what are the options for those now in scope?

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Following periods of consultation during 2022, the scope of Jersey's regime in relation to anti-money laundering, counter-terrorist financing, and counter proliferation financing (the **AML/CFT/CPF Regime**) has been aligned to the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (**FATF Recommendations**) of the Financial Action Task Force (**FATF**).

Subject to transitional periods for existing businesses, the changes took effect from 30 January 2023.

Context

Exemptions from compliance with the AML/CFT/CPF Regime have previously been linked to exemptions available from conduct of business and prudential regulation (**JFSC Regulation**) by the Jersey Financial Services Commission (**JFSC**). This has made it harder for Jersey to demonstrate that the AML/CFT/CPF Regime was compatible with the FATF Recommendations but has also raised questions of whether all the available exemptions were indeed compatible.

The list of activities and operations that now define the scope of the AML/CFT/CPF Regime (the **In Scope Activities**) has been recast to remove the links to JFSC Regulation, thereby clearly separating the scope of the AML/CFT/CPF Regime and the scope of JFSC Regulation. The list of In Scope Activities for the purposes of the AML/CFT/CPF Regime now mirrors the definitions of 'Financial Institution', 'Designated Non-Financial Businesses and Professions' and 'Virtual Asset Service Providers' in the FATF Recommendations.

It is important to note that there has been no change to the scope of JFSC Regulation. Although entities may now be subject to the AML/CFT/CPF Regime they can continue to rely on the same exemptions from JFSC Regulation as have always been available.

Transitional provisions

Existing entities that were carrying on an In Scope Activity on or before 29 January 2023, benefit from a transitional period that expires on 30 June 2023. Family offices that do not use a PTC administered by a regulated trust company business and Directors benefit from an extended transitional period that will expire on 31 August 2023.

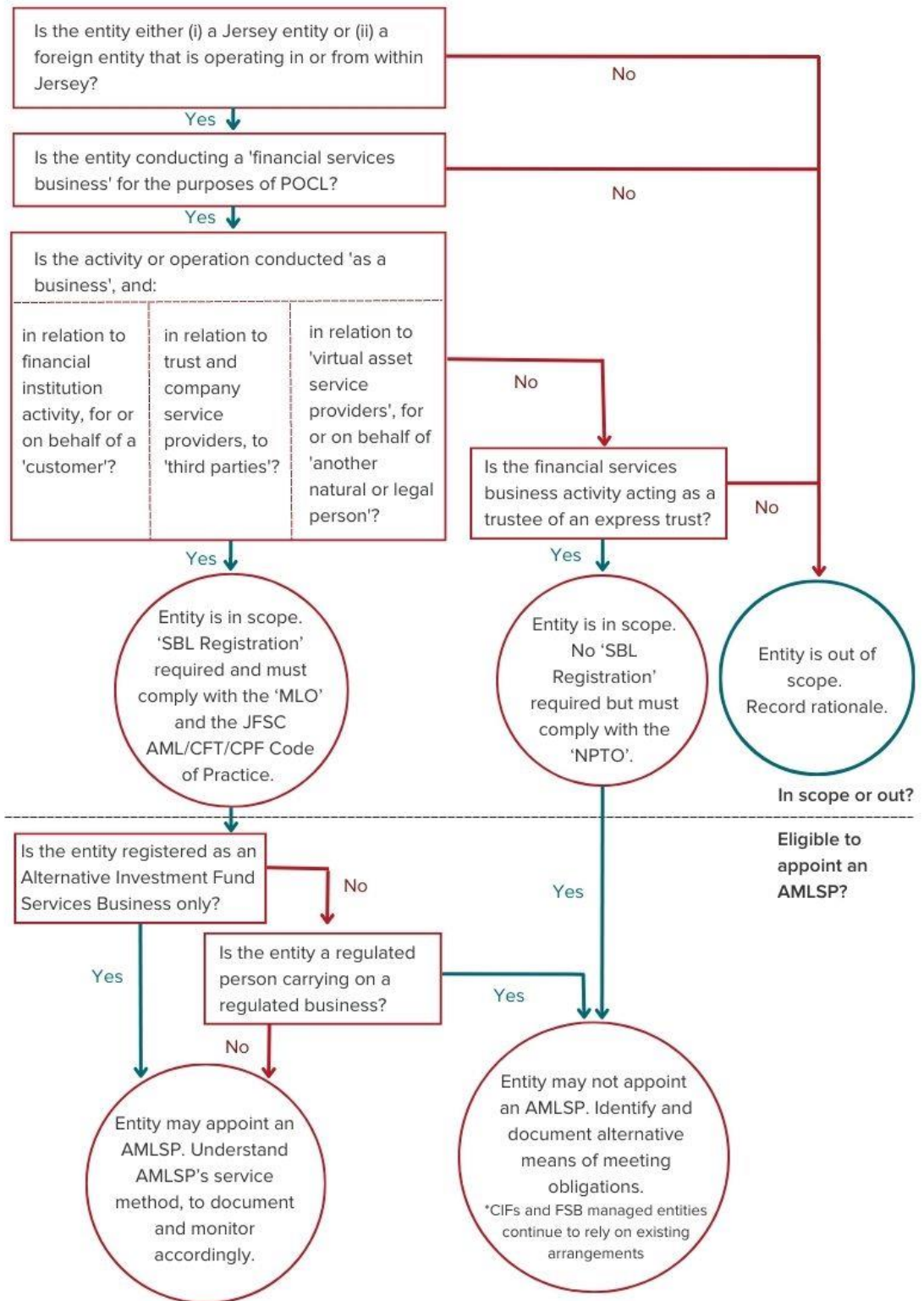
However, entities that are established, or commence a new In Scope Activity, on or after 30 January 2023 are required to comply with the AML/CFT/CPF Regime as soon as they commence the relevant In Scope Activity.

What should entities be doing?

There are two high level questions that should be considered for each Jersey entity and each entity carrying on activities or operations in or from within Jersey:

1. Is the entity carrying out any In Scope Activities?
2. If the entity is carrying out an In Scope Activity, what are its obligations and how can it discharge them?

The JFSC has created a [landing page](#) in relation to the revised scope of the AML/CFT/CPF Regime.



Is an entity carrying out any In Scope Activities?

Schedule 2 of the revised **Proceeds of Crime (Jersey) Law 1999 (POCL)** sets out the list of activities and operations that are potentially In Scope Activities. These activities are referred to as 'financial services business' activities and are divided into the following categories:

Activity category	Examples	Notes
Financial Institutions	Lending Trading Portfolio management Fund service provider Fund Issuer of securities	Includes any 'Investment Business' or 'Fund Services Business' under the Financial Services (Jersey) Law 1998 (the FS Law), irrespective of whether an exemption from JFSC Regulation is available. Includes any type of fund but not necessarily all AIFs, although that is clearly the intention.
Designated Non-Financial Businesses and Professions	Real estate agents Lawyers Accountants	
	Trust and company services providers <ul style="list-style-type: none"> • Providing registered office, director, secretary and/or partner • Formation agent • Acting as trustee of an express trust 	Includes any 'Trust Company Business' under the FS Law, irrespective of whether an exemption from JFSC Regulation is available.
Virtual Asset Service Providers	Exchanges Custody or administration	
Express Trust	Acting as trustee of an express trust, other than 'as a business' (a Non-Professional Trustee)	

The categories, and activities within them, are broadly cast and it is very likely that an entity conducting an In Scope Activity will be conducting several In Scope Activities.

For example, a general partner of a fund limited partnership that is a professional investor regulated scheme (commonly known as a 'PIRS', under the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001), although exempt under the FS Law, is likely to be conducting the Financial Institution activities of portfolio management and fund service provider as well as, potentially, trust and company services provider activities under the category of Designated Non-Financial Businesses and Professions.

As a business?

With the exception of Non-Professional Trustees, the activities and operations listed in Schedule 2 of POCL are only In Scope Activities if they are conducted 'as a business'. This is a key question, and it is a different question to whether an activity is carried out 'by way of business' that is relevant under the FS Law.

Whether an activity is being conducted 'as a business' is a subjective question, and requires entities to consider various indicative factors and whether the activity is carried on:

- 'for or on behalf of a customer', in the context of Financial Institutions;
- 'to third parties', in the context of trust and company service providers; or
- to 'another natural or legal person', in the context of Virtual Asset Service Providers).

The JFSC has published [Guidelines](#) on interpretation but they are indicative rather than being exhaustive and providing conclusive answers to every possible scenario. The Guidelines must be interpreted and applied in the right context.

According to the Guidelines, indicators that a person is conducting an activity 'as a business' include:

- the person holds out or publicly offers to conduct the relevant activity for other persons;
- the activity or operation being conducted for commercial purposes with the intention of earning a profit through receipt of compensation;
- the level of financial compensation from the activity or operation being significant; and
- the person conducts the activities or operations with a view to making a profit, including where the intention is for the profit to come to someone else.

Conversely, indicators that a person is not conducting an activity or operation 'as a business' include where that person does not receive any form of compensation.

As noted above, the JFSC Guidelines are not prescriptive or exhaustive and do not set out any definitive formula for determining whether an activity is being conducted 'as a business' or not. It is expected that there will be scenarios when one or more indicators suggest that an activity or operation is being carried on 'as a business' and also one or more indicators that it is not. The conclusion will require a qualitative assessment of the number and scale of indicators in each case. For example, the fact that a person receives a fee for an activity will not always mean that the person must be conducting the activity 'as a business', depending on what other indicators exist.

It is expected that further guidance will be made available either through relevant industry bodies and/or publication of 'frequently asked questions' by the JFSC.

Whatever conclusion is made on this first question, it is important that a record is kept of the analysis that was carried out, the conclusion that was reached and the rationale for that conclusion.

If the entity is carrying out an In Scope Activity, what are its obligations and how can it discharge them?

Obligations

Non-Professional Trustees must:

- comply with the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016 and the obligations in POCL applicable to a 'financial services business'; and
- have adequate maintained and applied procedures to prevent money laundering by an 'associated person'.

Entities carrying on any other type of In Scope Activity must:

- comply with the Money Laundering (Jersey) Order 2008 (**MLO**) and the JFSC's AML/CFT/CPF Code of Practice and the obligations in POCL applicable to a 'financial services business';
- register under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the **SBL**); and
- have adequate maintained and applied procedures to prevent money laundering by an 'associated person'.

Regulated entities and entities already registered under the SBL should have received a workbook from the JFSC. Completion of that workbook will deal with the obligation to register under the SBL. All other entities will need to submit an SBL application either directly or via their chosen anti-money laundering services provider (**AMLSP**) (see below).

Methods of compliance

An entity carrying on an In Scope Activity may fulfil these obligations:

- itself (and/or outsource certain aspects within its group or to a third party, which may need approval from the JFSC, depending on the circumstances); or
- if eligible to do so, by engaging the services of a regulated entity (registered under the FS Law for certain classes of trust company business or fund service business) as an AMLSP.

Where an entity is not eligible to appoint an AMLSP or otherwise elects to fulfil its obligations itself (or through outsourcing), it may not usually outsource the functions of money laundering reporting officer (**MLRO**) or money laundering compliance officer (**MLCO**). As a result, it is expected that client entities will rely on the services of an AMLSP unless they have a substantive presence in Jersey with individuals who can perform these roles.

An entity is eligible to appoint an AMLSP if it (a) is not a regulated person carrying on a regulated business (other than as an AIF services business) but (b) is required to register under the SBL. Notwithstanding their regulated status, unclassified funds (ie funds in relation to which a certificate has been issued under the Collective Investment Funds (Jersey) Law 1998) and fund services business managed entities that have no employees of their own and have previously relied on a JFSC supervised administrator and/or manager of a managed entity to provide an MLRO and MLCO will be able to continue doing so. The administrator / manager of a managed entity will not be an AMLSP and the relevant arrangements will continue to be covered by existing sections of the JFSC's Handbook on AML/CFT/CPF.

Entities providing AML/CFT/CPF compliance support in respect of Jersey private funds, unregulated funds, alternative investment funds (that do not otherwise constitute a fund for Jersey regulatory purposes), AIF services businesses and sub-threshold AIFMs will become AMLSPs in relation to these entities.

The AMLSP

A **new section** has been added to the JFSC's Handbook on AML/CFT/CPF to impose Code of Practice obligations and provide guidance in relation to AMLSP appointments.

In relation to an entity (X Limited) that appoints an AMLSP, the MLRO and MLCO appointed to X Limited by the AMLSP, will not need to obtain a confirmation that the JFSC does not object to their being appointed as MLRO/MLCO of X Limited. Instead, the AMLSP will have obtained confirmation of no objection from the JFSC for their relevant employees to be MLRO/MLCO to clients of the AMLSP and the AMLSP will keep a record of which client entities each individual MLRO/MLCO is appointed to.

An AMLSP has some scope to choose the method by which it will deliver AMLSP services to a particular client entity. Depending on the method used by the AMLSP, the entity might need to adopt its own BRA and policies and procedures and carry out its own ongoing-monitoring plan (using templates and the MLCO provided by the AMLSP) or it might not need to do so (if the AMLSP's own BRA and policies and procedures address the risks associated with the entity's business and customers).

Importantly, in either case, the entity appointing an AMLSP continues to bear ultimate responsibility for the entity's compliance with Jersey's AML/CFT/CPF Regime. The governing body of the entity should, therefore, satisfy itself that the AMLSP has in place satisfactory systems and controls, and that those systems and controls are kept up to date. It is also important that the appointment of an AMLSP is reasonable (including in relation to terms and conditions of the appointment) and that the entity appointing the AMLSP maintains reasonable oversight of the AMLSP on an ongoing basis. In this regard, the governing body of the entity should ensure that they understand the AMLSP service being provided and are satisfied that it is accurately documented and that they record careful consideration before appointing an AMLSP and of any measures to oversee the AMLSP's service. An AMLSP can assist the entity by having clear documentation and templates to guide the entity's governing body through relevant considerations.

How we can help

As mentioned above, there is a transitional period available for pre-existing businesses that expires on 30 June but new businesses are required to comply immediately. In any event, we recommend addressing this matter sooner rather than later to ensure appropriate arrangements are in place, if needed, well before expiry of the transitional period.

If you have any questions or concerns in relation to the revised scope of the AML/CFT/CPF Regime and how it might affect entities that you operate or administer, please do not hesitate to contact your usual Mourant team or any of the contacts listed below.

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