SEPTEMBER 2020

Bailiwick of Jersey
National Risk Assessment of Money Laundering

Combating Financial Crime. TOGETHER

Government of JERSEY

R.107/2020

Table of Contents

Foreword

Financial crime is constantly evolving and becoming more sophisticated and complex, meaning that new threats are regularly emerging for Jersey. As an International Finance Centre, Jersey is inevitably exposed to money laundering threats. We have a social and economic duty to detect and prevent these threats and we undertake this responsibility with the utmost diligence. Jersey has had legislation in place to prevent money laundering since 1988 and we are committed to combatting financial crime and upholding international standards as they are revised and updated. Jersey is proud to be involved in the setting of standards internationally and the development of reports, best practice and guidance in the areas of financial crime prevention and transparency by organisations such as the FATF, the OECD, the IMF and the World Bank. The island equally takes its responsibility and commitments to implement those standards seriously.

I am therefore pleased to publish Jersey's first National Risk Assessment Report of Money Laundering, in line with FATF's requirement for jurisdictions to identify, assess and understand the ML risks they face and to take action to effectively mitigate those risks.

This report is the first public report of its kind in Jersey and is the result of a significant collaborative effort by numerous professionals in our local finance industry, the Jersey Financial Services Commission, the Law Officers' Department, the States of Jersey Police and the Government of Jersey. The report makes use of an established methodology developed by the World Bank, which was used and enhanced where appropriate to suit the characteristics of Jersey. A substantial amount of data was collected and analysed to determine the threats faced by Jersey on a National basis as well as threats which are specific to individual sectors of our finance industry. I am grateful to everyone involved in the development of this report for their extensive work and ongoing commitment to combating financial crime.

As a result of the assessment, we were able to confirm the areas where Jersey has adequate systems and controls in place to mitigate risks. We also identified a number of areas where additional action is required if we are to counter potential risks satisfactorily. The report includes a summary of the action points, split into key themes.

There should be no doubt that Jersey is committed to addressing each of these themes to ensure that appropriate measures are taken, and continue to be taken, to better mitigate our money laundering risks going forward. This report represents Jersey's next step in the continually evolving call upon jurisdictions by the global community to assess in more detail the financial crime risks that they face and do more to prevent illicit finance worldwide.

Senator Ian Gorst
Minister for External Relations

SECTION 1

Introduction

FATF Recommendations

1.1 In February 2012, the Financial Action Task Force (FATF) published revised international standards on combating money laundering and the financing of terrorism and proliferation (FATF Recommendations). These set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering (ML) and terrorist financing (TF), as well as the financing of proliferation of weapons of mass destruction.

1.2 FATF Recommendation 1 calls on countries to identify, assess and understand their ML and TF risks, and to take action to effectively mitigate those risks. Many countries have responded to this call by undertaking a national risk assessment (NRA) and publishing action plans. FATF Recommendation 24 also calls on countries to assess the ML/TF risks associated with all types of legal persons that may be created under a jurisdiction's legislation.

1.3 Some countries have developed their own methodology to undertake such assessments; others have taken advantage of methodologies developed by the Council of Europe, International Monetary Fund and World Bank. For ML, Jersey has opted to use the World Bank national risk assessment tool (NRA tool) as its basis for identifying, assessing and understanding ML risk. The World Bank NRA tool was selected as a tool that has been developed by a significant International Financial Institution and which has been used as the basis to conduct a ML risk assessment by many countries worldwide and notably several International Finance Centres with similar characteristics to Jersey. Where required, the methodology has been enhanced by specific factors relevant to certain sectors.

Objectives of the NRA

1.4 The NRA is the first time Jersey has, in a centrally co-ordinated way across all authorities, looked to examine ML risk to Jersey. The overarching objectives of the NRA have been to:

- Identity ML threats and understand those threats in terms of the type of predicate offence[1], origin (domestic or foreign) and sector;
- Analyse ML threats from foreign jurisdictions;
- Identify Jersey's overall vulnerability to ML, which was examined separately to specific vulnerability at sectoral level, e.g. the banking sector; and
- Prioritise actions to improve Jersey's ability to prevent and detect ML(AML).

[1] Predicate Offences are crimes underlying money laundering or terrorist finance activity, e.g. fraud, corruption and tax evasion.

1.5 The output of the NRA – the NRA report – will allow Jersey to: (i) demonstrate that it understands its ML risks based, wherever possible, on factual evidence; and (ii) put additional controls and/or resources in place to address vulnerabilities that have been identified. The NRA report is accompanied by an action plan which will be used for reference by the national authorities and will be updated and amended as progress is made against actions. A thematic summary of these actions is provided in Chapter 6.

1.6 The NRA report will also provide a basis for considering whether any supervised activities might be exempted from some ML requirements in strictly limited and justified circumstances – where there is a proven low risk of ML.

1.7 Where higher risks are identified, it will be necessary to ensure that the AML/CFT regime appropriately addresses such risk, including through requiring supervised persons to: (i) take enhanced measures to manage and mitigate the risks; or (ii) ensure that this information is incorporated into their risk assessments.

Data and analysis period for the NRA Report

1.8 Whilst conducting the NRA, it was noted that data collected on different sectors in Jersey had not been uniform and contained varying levels of detail.

1.9 Authorities have held certain data sets at authority level for some significant time. That data was provided for the NRA covering the period 2013-2017. However, this information was not suitably detailed in terms of sector level information to carry out the initial NRA. In order to try and address this, various data collection exercises were carried with industry in 2018/19, one objective of which was to gather a more comprehensive data set from industry. However, certain data fields in respect of some sectors was still not readily available. Predominantly the data used in this report covers the period 2017/18 but in some specific sectors this is supplemented by 2019 data. It is therefore important to note that Data across the report is non-uniform and is taken from different parties at different times.

The following must be particularly noted when considering the report:

i) Authority Level Data was collected between 2013-2017

ii) Industry Level Data was collected between 2017/18 (occasionally 2019)

1.10 The non-uniform data collection has impacted on analysis in the process, and therefore the report should be considered in this manner. In a number of areas, as the data analysis progressed it became apparent that the data available still did not allow for a detailed analysis of ML risk and further data would be required to be collected. Data is now being collected on an annual basis and a major finding and action of the NRA is the need for more regular, sufficient and uniform data to be collected through a single mechanism to allow ongoing detailed analysis of ML risk to be conducted. This is being prioritised as an action from the NRA as Jersey moves to ongoing detailed analysis of ML risk on a regular basis.

1.11 It should be noted that the progress of the NRA has been disrupted by significant changes in Government resource and notably change in individuals leading the Island's work on the NRA. This has meant that the project has taken 12-18 months longer to reach completion than was initially planned. The impact of COVID-19

from March 2020 onwards also caused further delay to the work required to progress the publication of the NRA report.

Organisation of Report

1.12 The Report is structured in two parts:

i) Part A: National ML Risk

ii) Part B: Sectoral ML Risk

1.13 Part A: After several contextual chapters there is an analysis of Residual Risk (Chapter 5) and Recommended Actions (Chapter 6). The report goes on to analyse Jersey's overall national ML threat (Chapter 7) and national ML vulnerabilities (Chapter 8).

1.14 Part B: ML risk is considered sector-by-sector, including sectors that are supervised by the Jersey Financial Services Commission (JFSC) for conduct and prudential risks as well as sectors that are supervised by the JFSC only for compliance with requirements to prevent and detect ML and TF. Consistent with Part A, the ML threat and ML vulnerabilities of each sector are assessed.

Terrorist Financing

1.15 The NRA process also involved consideration of TF risk to Jersey. However, Jersey will be publishing two separate reports:

1) This report is the NRA report on ML Risk

2) There will be a separate publication of the NRA on TF risk - which will be published in the first half of 2021

The reports will use different methodologies relevant to the subject matter.

Part A – National risk

SECTION 2

Economic and Geopolitical Position

2.1 The Bailiwick of Jersey is a self-governing dependency of the Crown. Jersey is autonomous in all domestic matters, and has its own financial, legal and judicial systems. It is not a sovereign state, but it is not and has never been part of the United Kingdom (UK), a British colony or a dependent territory.

Geographical Position

2.2 The island of Jersey has a total surface area of 122 square kilometres and is located 22.5 kilometres off the north-west coast of France and 137 kilometres from the English coast.

Population

2.3 Jersey's resident population at the end of 2018 was estimated as 106,800.

2.4 The last population census was undertaken in March 2011 and the total number of inhabitants reached 97,857. At the time of the 2011 census, half the Island's population were Jersey-born; 31% were born elsewhere in the British Isles; 7% were from Portugal or Madeira; 8% from other European countries; and 4% from the rest of the world. Persons wishing to buy and occupy property in Jersey must meet certain legislative criteria to become residentially qualified and 85% of the relevant population was so qualified.

Constitutional Position

2.5 Jersey is a Crown Dependency (CD) and not part of the United Kingdom (UK). The Island is not represented in the UK parliament and UK Acts of Parliament only extend to Jersey if expressly agreed by the Island that they should do so. Jersey belongs to the Common Travel Area and the definition of UK in the British Nationality Act 1981 is interpreted as including the UK and the CDs together. Persons who are born, adopted, registered or naturalised in Jersey are British citizens.

2.6 While the UK is formally responsible for Jersey's international relations and defence, the Island has developed its own international identity, which was expressed formally in a Framework Agreement between the Island's Chief Minister and the UK Secretary of State for Constitutional Affairs. In line with this

agreement, the UK will not act internationally on Jersey's behalf without prior consultation. Within the UK government, responsibility for relations between Jersey (and the other CDs) and the UK lies with the Privy Counsellor for the CDs - the Secretary of State for Justice and Lord Chancellor.

2.7 Although Jersey cannot sign or ratify international conventions in its own right, unless entrusted to do so by the UK. According to a Framework Agreement, and following a request by the Jersey authorities, the UK may arrange for its ratification of any international convention to be extended to Jersey. In line with this agreement, the UK will not act internationally on Jersey's behalf without prior consultation. Jersey enters into a variety of agreements at Government level and at organisation level (such as MOUs), which are non-binding in international law, which advance its policy and operational goals.

Government Structure

2.8 Executive powers are exercised by a Chief Minister and twelve ministers, known collectively as the Council of Ministers. The Chief Minister is elected by the members of the Assembly of the States of Jersey (the States) and he or she nominates the other ten ministers, who are then voted on also by the States.

2.9 Other executive powers (of a parochial/municipal nature) are exercised by the Connétables and a Parish Assembly in each of the twelve parishes. The Connétable is the head of each parish by virtue of his or her office, has a seat in the States where he or she represents the municipality and may speak and vote on all matters

2.10 The States is responsible for adopting legislation and scrutinising the Council of Ministers. Forty-nine elected members (Senators, Deputies and Connétables) sit in the unicameral assembly, together with ten non-elected, non-voting members, including the Bailiff, the Lieutenant Governor, the Dean of Jersey, the Attorney General (AG) and the Solicitor General (SG).

2.11 The Queen's representative and adviser on the Island is the Lieutenant Governor who is the formal point of contact between the Government of Jersey (GoJ) and the Crown.

Jersey's Business Model

2.12 Jersey's financial sector is dominated by banking, Trust and Company Service Providers (TCSPs), fund administration and fund management, all of which benefit from a simple and transparent tax neutral environment.

2.13 Traditionally, the UK market has provided opportunities for the Island's financial services sector. Changes to UK taxation legislation over the years have lessened opportunities for new business from that jurisdiction, and European markets more generally; there has been an increasing tendency to seek business in new markets. The strategy identifies countries in a number of key regions (Asia, the Middle East, sub-Saharan Africa and North America) based on common interests with Jersey. A number of these jurisdictions are also priority markets for Jersey Finance which has offices in Dubai, Hong Kong, China (HKC) and opened an office in New York in 2019. Jersey Finance is the financial industry promotional body for Jersey. The strategy was further updated in 2019[2], and now includes a broader matrix of indices used to evaluate countries with

[2] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Global%20Markets%20Strategy%20CM.PDF

which to pursue engagement in order to position Jersey as a more influential partner internationally, with maturing commercial and political relationships. These indices include data from the JSFC on higher risk countries and the Basel Anti-Money Laundering Index. The updated strategy was not considered in NRA analysis due to timing of publication being after the main analysis period.

2.14 Over the last 50 years, Jersey has established a relationship with the City of London and there are strong links between businesses in the two jurisdictions. Jersey Finance[3] explains: *"Jersey represents an extension of the City of London for corporate treasurers, institutional bankers and treasury specialists, fund promoters, brokers and other corporate financiers"*. Many of the legal persons and arrangements established under Jersey law that are used in international transactions are instigated by large London law firms. Some local law firms have also established a presence in London to further develop this business model.

Banking

2.15 The banking sector has been through a period of consolidation; at its peak there were over 70 Banks in Jersey. At the end of 2018 there were 26 banks in Jersey, of which 6 are subsidiaries and the remainder are branches. Jersey subsidiary banks and branches are subject to supervision by the JFSC and additionally by overseas regulators as the majority are part of group consolidated regulation (incl. UK (8), other EU countries (5), North America (5), Switzerland (4), Africa (3) and Middle East (1)). The banking services provided across different banks are diverse, representing private banking for high-net worth individuals, banking services for the funds and trusts industry, services to corporate treasury functions, and international banking services for expats. Prior to the introduction of the UK "ring-fencing" of retail banking in the UK, it was a common practice for deposits to sit in Jersey branches which then funded UK retailing banking balance sheets. The "ring-fencing" rules have impacted the ability of subsidiaries of UK banks to up-stream deposits to their UK group.

Customers are generally: (i) retail and high net worth clients from Jersey and the UK; (ii) UK expatriates; (iii) non-residents with international needs; and (iv) trust and company structures and funds administered in Jersey by TCSPs and FSBs.

2.16 A number of international banks use Jersey as a base for servicing overseas customers. This means that those customers do not select Jersey to do their banking; rather Jersey is selected by the deposit-taker's group.

TCSP business

2.17 Jersey continues to be a leading jurisdiction for trusts, reflecting the significance of the Trusts (Jersey) Law 1984 where Jersey was one of the first jurisdictions in the world to place common law Trusts provisions in legislation. The law has since been copied by many jurisdictions seeking to develop trust activities, but this has not detracted from Jersey's leading position.

2.18 TCSP structures range from simple trusts and underlying company structures for UK and local families, through to high value and complex structures working with trusts, companies, limited partnerships and foundations for families that operate cross-borders. The majority of trusts administered in Jersey are "discretionary" – where decisions are left to the discretion of the trustee.

[3] https://www.jerseyfinance.je/jersey-the-finance-centre/sectors/banking/

2.19 Family office services, to manage the interests and affairs of ultra-high net worth families are also available, as are structures for corporates looking to support and reward staff.

2.20 The ownership base for TCSPs is changing: banks are selling non-core business and owners of TCSPs established in the 1980s are looking to retire and sell their business. Recent years have seen an emergence in private equity ownership of TCSPs.

Fund administration and management

2.21 Jersey has a global market for fund administration and management, targeting professional and institutional investors. The Jersey Private Fund vehicle, launched recently, is designed to enable small numbers of sophisticated investors to bring their funds to market quickly and efficiently.

2.22 Alternative asset classes account for more than three quarters of Jersey's total funds business with private equity continuing to be the largest industry sub-sector, followed by hedge funds, real estate funds and infrastructure funds. In recent years, significantly well-established fund managers have brought some of the largest funds ever raised in Jersey to the market.

2.23 Jersey is also proving increasingly popular as a host to asset managers and now includes some of the most significant international asset managers.

2.24 Jersey legislation permits globally focussed fund managers to market their pan-European funds through a European Union (EU)-compliant regime to European investors, and non-European funds through a "rest of the world regime". Jersey was amongst the first jurisdictions to be approved by the European Securities and Markets Authority for the granting of passport rights to market alternative investment funds into the EU when this becomes available to third countries.

FinTech

2.25 Jersey has a thriving digital business community with more than 400 digital and creative companies based on the Island and more than 3,000 professionals employed in the digital-tech economy. The majority of Jersey's digital businesses provide enterprise solutions, apps and software, or support telecoms infrastructure.

2.26 Digital Jersey promotes the Island as a technology hub. The Government of Jersey has recently announced a GBP 4m cash boost for Digital Jersey over the next four years in order to help attract more start-up businesses, create new jobs and develop the use of FinTech in the Island.

Other

2.27 Jersey has sought to develop itself as a leading centre for Sharia-compliant international investment. It also presents itself as a centre for family offices and philanthropy.

2.28 In recent years, extractive industry companies have established head offices in Jersey.

Materiality and Contextual Factors

Economy

2.29 The main economic indicator used to measure the value of the economy is the GVA (Gross Value Added) and the size of Jersey's economy, as measured by GVA, was GBP 4.7bn in 2018.

2.30 Jersey's economy is based on financial services (39.2% of GVA in 2018), public administration (8.7%), construction (7.1%) and wholesale and retail (6.7%).Finance and legal activities accounted for 26% of private sector jobs at 31 December 2018[4] . Most are employed by TCSPs (4,290) followed by banking (3,380), legal activities (1,630), accounting and compliance (1,270) and fund administration (1,250). Since December 2013, the sub-sectors seeing the largest increases in jobs have been trust administration (up 590) and fund administration (up 440). The number working in banking is down 340. Looking further back, the number of jobs in the banking sub-sector in December 2018 was around 2,000 lower than that recorded ten years earlier. Over the same period, employment by TCSPs, fund administration and legal sub-sectors (combined) has increased by around 2,000.

Financial sector

2.31 The JFSC collects data from regulated entities in order to support risk-based supervision. An annual data collection exercise commenced in 2018, requiring 2017 data to be collected. Consolidated data from such annual exercises has been made available for the purposes of the NRA.

Table 2.1: Sector size indicators as of 31 December 2017 (source: JFSC)

	Number of customers	Number of non-Jersey customers	Number of BO&C	Assets under management (GBP bn)
Banks	692,703	496,709	614,257	69
TCSPs	67,061	43,101	68,757	660
Funds	77,986	74,8951	-	339
Investment business	89,759	54,570	58,254	102
Lending by banks	37,089	14,308	30,941	33
Lending	23,947	2,070	22,631	0.88
Legal sector	20,980	4,072	12,176	-
Accounting sector	19,604	3,397	12,349	-
Estate agents	1,645	35	924	-

2.32 A private survey issued in 2013 considered the business conducted by Jersey as an international financial centre and estimated, at that time, that Jersey was custodian of GBP 1.2tn of wealth.

[4] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Jersey%20Labour%20Market%20Dec%2018%2020190405%20SJ.pdf

Other indicators of size and importance of finance sector

2.33 Jersey ranks 47 (out of 102 centres) in the Global Financial Centres Index[5]. New York, London and HKC top the list.

Taxation

2.34 Jersey has a simple and transparent taxation system. Jersey has effective exchange of information relationships with more than 110 jurisdictions through its Tax Information Exchange Agreements, Double Tax Agreements and the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It regularly exchanges information with foreign authorities. Tax residency must be disclosed to the Comptroller of Revenue and carries an annual filing requirement and therefore is subject to control mechanisms

2.35 Companies were originally subject to a tax system which exempted foreign investors from corporation tax and levied a 20% rate on Jersey residents. Since 2009, the rate of corporation tax has been set at 0%, except for persons carrying on financial services (with certain exemptions) at 10%, utility companies, landlords and property developers and some retailers (most paying 20% on profits).

2.36 Jersey has received negative publicity for its use in tax avoidance. However, this criticism often fails to note the approach to addressing this risk that Jersey has applied for many years, namely regulating the financial services community, transparency and information exchange.

2.37 Despite being criticised by certain NGOs for its tax practices, the OECD concluded in July 2019 that Jersey's tax regime is "not harmful" to the rest of the world. Conducted by the OECD's Forum for Harmful Tax Practices (FHTP), the review tested the strength of Jersey's economic substance requirements – a series of measures put in place to avoid the establishment of 'shell companies'.

2.38 The Island has also engaged with the EU Code of Conduct Group on Business Taxation, being listed as a cooperative jurisdiction in November 2017. The EU's positive assessment came as a result of the Island's collaborative dialogue with the COCG. The EU Council tasked the COCG with assessing jurisdictions in the following three areas: tax transparency, fair taxation and compliance with anti–base erosion and profit shifting (BEPS) measures. While Jersey's standards of tax transparency and anti-BEPS compliance were positively assessed, the lack of a legal substance requirement for entities doing business using the Island was highlighted as a concern. In response the Government of Jersey introduced the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (Law), which came into effect on 1 January 2019. The law makes provision for imposing an economic substance test on companies which are tax resident in Jersey. Tax resident companies must be able to demonstrate that they meet the relevant criteria, in order to pass the test. After a number of months of being in force, the law was assessed by the EU finance ministers as meeting the requirements for demonstrating economic substance.

2.40 Jersey is also amongst the leaders in the implementation of the OECD BEPS programme, a measure designed to stop multinationals from shifting profits between countries to avoid paying tax. Jersey is a BEPS Associate and member of the Inclusive Framework, set up to ensure the effective global implementation of BEPS. It formally signed up to the OECD Multilateral Convention on BEPS in 2017.

[5] https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/gfci-25-explore-data/gfci-25-rank/

Transparency

2.40 The majority of Jersey's activities focus on the pooling and deployment of assets that have already been taxed. Tax neutrality is not a form of, and does not facilitate, tax evasion; lack of transparency does.

2.41 Jersey has adopted international standards designed to prevent tax evasion. In particular:

- Jersey was an early adopter of the OECD's Common Reporting Standard, the global standard on the automatic exchange of information. It also shares information under the US Foreign Account Tax Compliance Act model.
- It is a signatory to the Multi-lateral Convention on Mutual Administrative Assistance in Tax Matters.
- It is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes. In 2017, the OECD's Peer Review Group on Transparency rated Jersey fully compliant in all 10 of the areas reviewed.
- It has signed 38 Tax Information Exchange Agreements and 15 full Double Tax Agreements[6], all of which provide for information exchange on request in regard to tax matters.
- As an associate of the OECD's BEPS initiative, Jersey exchanges information under the Country-by-Country Reporting regime, as well as information on cross-border tax rulings. It was the third jurisdiction to bring into force the Multilateral Legal Instrument to ensure that its Double Tax Agreements could not be used for the purposes of tax avoidance or tax evasion.

2.42 In addition, Jersey has also maintained a central register of the beneficial ownership of companies for more than two decades. Jersey has held a leading position globally in transparency of beneficial ownership which has been recognised by the IMF, the World Bank, the OECD Global Forum and MONEYVAL in its 2016 report on Jersey. This position is underpinned by a verified central register of beneficial ownership, with requirements for legal entities owned by non-residents to be incorporated and administered by a regulated TCSP. There is also the ability to add significant conditions to incorporation, obtaining information on all beneficial owners and controllers and imposing conditions on the activity of the entity. Jersey has exchanged information to the declared satisfaction of competent authorities and law enforcement agencies worldwide for decades and continues to review the effectiveness of its regime and make updates based on emerging international standards and published best practice.

2.44 There is a well-publicised, long standing debate around public access to beneficial ownership registers. Jersey holds a beneficial ownership register and whilst this is not public, it is verified data. Jersey believes its model of verified information available to law enforcement provides superior information to public non-verified information.

2.45 In 2017, under a direction issued pursuant to Article 12 of the Financial Services Commission (Jersey) Law 1998, the Chief Minister issued a direction[7] to the JFSC in relation to the exchange of information on Beneficial Ownership and control with the JFCU of the States of Jersey Police. This allows the JFCU direct access

6 https://www.gov.je/TaxesMoney/InternationalTaxAgreements/DoubleTaxation/Pages/FullDoubleTaxation.aspx
7 https://www.jerseyfsc.org/pdf/Exchange-of-Information-Ministerial-Decision-30-June-2017.pdf

to beneficial owner and controller information held by the JFSC Registry in order to fulfil the obligation to support the worldwide fight against financial crime. This means in practice LEAs can have full access to the beneficial owner register.

2.46 The effectiveness of Jersey's register has been assessed recently by the UK as part of a bilateral agreement (referred to as the Exchange of Notes) which came into force in 2017 and which commits Jersey to providing UK law enforcement agencies with information about the beneficial owners of Jersey companies (on a reciprocal basis). A report presented to the UK Parliament[8] has found that Jersey's ability to share company beneficial ownership information with UK law enforcement agencies is effective. The report found that, during the first 18 months of operation, 26 requests for information on the Jersey register were made. Responses were provided for all requests made and almost all within the agreed timeframe.

General business environment

2.47 Jersey is the third simplest jurisdiction for businesses to operate in, according to a report by the TMF Group. The Global Business Complexity Index (2019)[9], which compares key administrative and compliance demands across 76 jurisdictions worldwide, ranked Jersey as the 74th least complex jurisdiction out of 76 surveyed.

2.48 The report, which was based on a combination of statistically weighted data and research among market experts, focuses on three areas: rules, regulations and penalties; accounting and tax; and hiring, firing and paying employees.

2.49 Jersey was found to be an unusually simple location to operate in due to: (i) alignment of policy and legislation with international standards; (ii) a fast process for company incorporation; and (iii) a stable regulatory environment.

[8] https://www.gov.je/News/2019/Pages/BeneficialOwnershipInformation.aspx
[9] https://www.tmf-group.com/en/news-insights/publications/2019/global-business-complexity-index/

SECTION 3

Legal, Supervisory and Law Enforcement Framework

3.1 This chapter outlines Jersey's legal, supervisory and law enforcement framework.

AML Framework

3.2 The AML/CFT framework has high convergence with the FATF Recommendations. The UK's ratifications of the key international instruments (the Vienna Convention (1998), the Palermo Convention (2000), the UN Convention against Corruption (2003) and the Terrorist Financing (TF) Convention (1999)) have also been extended to Jersey which has implemented the provisions of the said conventions. The ratification of the Strasbourg Convention (2005) has also been extended to Jersey and it is in the process of extending the ratification of the Cybercrime Convention (2001).

Money Laundering (ML) offences

3.3 ML offences are provided for in Part 3 of the Proceeds of Crime (Jersey) Law 1999 (POCL) which criminalises: (i) dealing with criminal property (using, acquiring or possessing/controlling criminal property or knowingly entering into an arrangement to facilitate the same); or (ii) concealing criminal property (concealing, disguising, converting/transferring or removing from Jersey).

3.4 "Criminal Property" is defined in Article 29(1) to be property which: (i) is derived from or obtained, directly or indirectly, through "criminal conduct" or used in or intended to be used in criminal conduct ; and (ii) is known or suspected by the alleged offender to constitute/represent such proceeds." "Criminal conduct" is defined in Article 1 to mean conduct that constitutes an offence specified in Schedule 1 or, if it occurs outside Jersey, would have constituted such an offence if occurring in Jersey. Offences specified in Schedule 1 are those for which a person is liable on conviction to imprisonment for a term of one or more years (whether or not the person is also liable to any other penalty).

3.5 ML therefore extends to all serious offences where the maximum statutory penalty is one year or more, and all customary offences where the maximum penalty is "at large" i.e. not circumscribed by statute. Self-laundering is also an offence (Article 29(2)).

3.6 A person guilty of ML shall be liable to imprisonment for a term not exceeding 14 years or to an unlimited fine or to both.

Restraint and confiscation/forfeiture of crime proceeds and terrorist property

3.7 Under Articles 15 and 16 of the POCL, the AG may apply to the Royal Court for a freezing order (Saisie Judiciaire):

(i) where a confiscation order has been made;

(ii) where:

a) proceedings have been instituted against a defendant for an offence carrying a maximum penalty of one or more years' imprisonment or for confiscation, such proceedings are not concluded, or the court is satisfied that such proceedings are to be instituted; and

b) the Court is satisfied that there is reasonable cause to believe the offender has benefitted from the offence etc; or

3.8 On the making of a saisie, all realisable property of the defendant vests in the Viscount.

3.9 Part 2 of the POCL provides for confiscation where a person has benefited from any relevant criminal conduct. "Relevant criminal conduct" means the offences for which the defendant appears to be sentenced together with any other offences which the Royal Court may take into consideration in sentencing the defendant. The amount which the defendant is required by a confiscation order to pay shall be the amount assessed by the Royal Court to be the value of the defendant's benefit from the relevant criminal conduct.

3.10 Property corresponding to the property laundered or the proceeds of crime may be confiscated. Instrumentalities may also be confiscated. Instrumentalities are capable of forfeiture at civil law but may also add to the value of a POCL confiscation order where they additionally amount to a defendant's benefit from crime.

3.11 Jersey's consent regime (Article 32 of the POCL) means that, if funds identified in a suspicious activity report (SAR) are suspected to be potentially linked to criminality, consent for a transaction may be withheld. This has the effect of restraining assets without recourse to the courts of Jersey and has no time limits so long as it can be justified in the prevailing circumstances.

Civil Forfeiture

3.12 Pursuant to the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018 (Forfeiture of Assets Law), an authorized officer may seize cash for up to 96 hours if he has reasonable grounds for suspecting that it is tainted cash (Article 5), and the AG may apply to the Bailiff for an order authorizing the detention for a longer period. Where the AG has reasonable grounds to believe that property held in any bank account is tainted property, the AG may apply for a property restraint order prohibiting the withdrawal, transfer or payment out of the bank account of the property, or part of the property, as specified in the application.

3.13 Tainted cash/monies in bank accounts may be forfeited unless the defendant proves to the Court that the property is not tainted (Articles 11 and 15 of the Forfeiture of Assets Law). Property is tainted if it is used in, or intended to be used in, unlawful conduct or obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.

General preventative measures

3.14 The Money Laundering (Jersey) Order 2008 (Money Laundering Order) and the AML/CFT Handbooks[10] sets out the requirements that regulated financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) must follow when carrying on financial services business: (i) in, or from within, Jersey; or (ii) anywhere through a Jersey company.

3.15 Article 11(1) requires a relevant person (defined in Article 1) to establish and maintain appropriate and consistent policies and procedures (that take account of risk in respect of the person's financial services business, and financial services business carried on by a subsidiary), in order to prevent and detect ML.

Customer due diligence (CDD)

3.16 Article 13 of the Money Laundering Order prescribes that a relevant person must apply identification measures before the establishment of a business relationship or carrying out a "one-off transaction" equal to or above a set threshold. "Identification measures" is defined under Article 3 and is consistent with customer due diligence (CDD) measures required under FATF Recommendation 10. CDD is also required when there are suspicions of ML and where there are doubts about the veracity or adequacy of documents, data or information previously obtained. Identification measures must be applied to the customer, the beneficial owner/controller of the customer and any third parties for whom the customer acts.

3.17 Article 15 requires a relevant person to apply enhanced CDD measures to a number of specific relationships and in any situation which, by its nature, can present a higher risk of ML. Articles 17 and 18 set out exemptions from the application of full CDD measures in certain specified circumstances.

3.18 Article 13 (through Article 3(3)) mandates ongoing monitoring which consists of: (i) scrutinising transactions undertaken throughout the course of a business relationship and (ii) keeping documents, data or information up to date and relevant.

Record-keeping

3.19 Under Articles 19 and 20 of the Money Laundering Order, a relevant person must keep a record comprising: (i) a copy of evidence of identity obtained pursuant to the application of CDD measures and all of the supporting documents, data or information – for at least 5 years after the date on which the relationship ends or one-off transaction is completed; and (ii) a record containing details relating to each transaction carried out in the course of any business relationship or one-off transaction – for a period of five years commencing with the date on which the transaction is completed.

3.20 Additionally, the JFSC AML/CFT Handbooks also require that all documents related to risk assessments, suspicious activity reports, corporate governance and information regarding screening, awareness and training of employees must be kept for a period of 5 years.

[10] Four AML/CFT Handbooks are published by the JFSC, containing both Codes of Practice (enforceable regulatory requirements) and guidance in relation to AML/CFT requirements.

Reporting of suspicion

3.21 Relevant persons are required to make a report under Article 34D of the POCL where they know or suspect, or have reasonable grounds for knowing or suspecting, that another person has committed an ML/TF offence. The report must be made to: (i) a police or customs officer; or (ii) a money laundering reporting officer (or other designated officer) in line with procedures established by an employer. It is an offence to fail to make a report and a person who is guilty is liable to imprisonment for a term not exceeding 5 years or to a fine or to both.

3.22 In addition, "protective" reports may also be made under Article 32 of the POCL such that, so long as certain conditions are met, the person shall not be guilty of an ML offence. Protection is available if the person making a disclosure does so in good faith and: (i) if the disclosure is made before the person does the act in question, the act is done with the consent of a police officer; or (ii) if the disclosure is made after the person does the act in question, it is made on the person's own initiative and as soon as reasonably practicable after the person does the act in question.

Cross-border cash controls

3.23 Part 5A of the Customs and Excise (Jersey) Law 1999 (Customs Law) imposes a regime requiring "cash" to be disclosed to a customs officer on request and describes the penalties that may be imposed for anyone who refuses to make a disclosure, makes an untrue disclosure or fails to produce cash or baggage when requested to do so.

3.24 An officer may require a person who is exporting or importing goods (accompanied or unaccompanied freight), or entering or leaving Jersey with cash in baggage or on their person, to disclose if they are exporting or importing cash with a value in excess of EUR 10,000 (or equivalent) and to answer questions in respect of any such cash.

Non-Profit Organisations (NPO)

3.25 The Non-Profit Organizations (Jersey) Law 2008 (NPO Law) requires NPOs to register with the JFSC, except where administered by a trust and company services provider (TCSP) (regulated NPO). Information required for registration includes: the amount of funds to be raised in a year; the amount of funds to be disbursed; and jurisdiction in which funds are to be raised and disbursed. In addition, it is necessary to present a brief statement of purpose, objectives, and activities.

3.26 Article 9 of the NPO Law requires an NPO to update the information provided to the JFSC at the time of registration, or subsequent to registration, where it changes. Article 11 of the NPO Law requires an NPO to keep financial records and to retain them for at least five years. It must also make those records available to the JFSC if required to do so to enable it to carry out its functions under the NPO Law.

Legal persons

3.27 A TCSP must be used to form a legal person, except in the case of a company with locally resident shareholders whose identity must be found out and verified

by the JFSC. Following registration, each legal person must maintain (at least) a registered office in Jersey, and all providers of registered office by way of business must be TCSPs or FSBs providing a registered office for a fund vehicle.

3.28 All legal persons, except foundations, are required to submit details of beneficial ownership to the Companies Registry, which is held on a central register. Data collected is run through external data sources. Following an agreement between the UK and Jersey, a formal mechanism has been established to permit beneficial ownership information to be exchanged between the two jurisdictions within 24 hours for non-urgent requests and one hour for urgent requests.

3.29 The JFSC applies a sound business practice policy[11] to legal persons which sets principles regarding activities that are considered to be sensitive and which are considered likely to present a reputational risk. Legal persons are also expected to follow a Government of Jersey statement on abusive tax schemes[12].

High-Level Commitment and Institutional Framework

3.30 Jersey recognises the importance of maintaining a comprehensive and robust AML/CFT regime. This requires high-level political commitment from the government and close collaboration and coordination among policy-making bodies, financial regulators, law enforcement authorities and others.

3.31 The Government of Jersey is committed to fighting ML. The GoJ website[13] explains that: (i) Jersey is committed to upholding international standards in the area of financial crime; and (ii) Jersey follows the FATF Recommendations. In addition, the Policy Framework for the Jersey Financial Services Industry[14] (2014) includes complying with international standards and initiatives having a global application as a key objective. The Government Plan 2020-2023[15] for Jersey forms an important part of the strategic framework for the Island and brings to life the priorities set out in the Common Strategic Policy of the GoJ[16]. That document specifically notes the importance of underpinning capability in international tax policy, financial crime policy, financial services supervision and enforcement.

Minister for External Relations

3.32 Ministerial responsibility for all financial services areas, including overarching responsibility for financial crime policy, sits with the Minister for External Relations. The Minister also exercises responsibilities in accordance with the Council of Ministers Common Policy on External Relations with regard to the implementation of UN and EU financial sanctions. The Minister also facilitates treaty extension to Jersey and is responsible for fulfilling the island's external relations and financial services treaty obligations. In addition, the Minister of External Relations MER is the Competent Authority for financial sanctions in Jersey and is therefore responsible for implementing UN and EU financial sanctions, and receiving licence applications and suspected breach notifications.

3.33 Other ministers have a role in tacking financial crime. The Minister for Home Affairs is responsible for the States of Jersey Police (SoJP) and the enforcement responsibility of the Jersey Customs and Immigration Service (JCIS) in respect

11 https://www.jerseyfsc.org/industry/guidance-and-policy/sound-business-practice-policy/
12 https://www.jerseyfsc.org/pdf/CMD-Abusive-Tax-Statement-20140729.pdf
13 https://www.gov.je
14 https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/P%20Financial%20Services%20Policy%20Framework%2020140402%20LO.pdf
15 https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Government%20Plan%202020-23%20VB.pdf
16 https://www.gov.je/Government/PlanningPerformance/CommonStrategicPolicy/Pages/CommonStrategicPolicy.aspx

of financial crime. The Minister for Treasury and Resources is responsible for administering the Criminal Offences Confiscation Fund which exists for the confiscation of the proceeds of crime.

3.34 The GoJ has established a multi-agency co-ordinating group - the Jersey Financial Crime Strategy Group (JFCSG) - to support the Minister.

Law Officers' Department (LOD)

3.35 The LOD comprises the AG and the Solicitor General, his deputy, together with other advocates, solicitors and legal professionals.

3.36 The AG has statutory investigatory powers in respect of cases of serious or complex fraud, under the Investigation of Fraud (Jersey) Law 1991 (Investigation of Fraud Law). Along with the SoJP, the LOD is also responsible for the investigation of ML and FT. The AG is also the prosecuting authority in Jersey and all prosecutions are brought in his name.

3.37 The LOD consists of the Criminal Division and the Civil Division supported by a small Administration team. The Criminal Division is divided into three teams: the Criminal Court Team; the Economic Crime and Confiscation Unit (ECCU) and; the Mutual Legal Assistance Team. An operating protocol agreed between the AG and the SoJP lists specific criteria that must be met before investigations are accepted within the ECCU which is expected to investigate and prosecute complex fraud, ML and TF cases. The ECCU also identifies and prosecutes systems and controls failings (preventative measures) contrary to the Money Laundering Order.

3.38 The AG is also responsible for mutual legal assistance. The work involved in this area includes gathering written and oral evidence for use in overseas criminal or civil asset recovery investigations and proceedings, as well as freezing and confiscating the proceeds of crime and drug trafficking.

3.39 The ECCU is the sole agency within the LOD that also investigates and applies for civil asset forfeiture orders under the Forfeiture of Assets Law. This process is used where a criminal prosecution against a natural person is not possible due to technical or other evidential deficiencies.

Joint Financial Crimes Unit – Financial Intelligence Unit (JFCU-FIU)

3.40 The JFCU-FIU is prescribed as Jersey's financial intelligence unit under the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 2015, which are made under Article 41B of the POCL. It operates independently from the SoJP's Force Intelligence Bureau which handles all non-financial police intelligence.

3.41 In addition to dealing with SARs, the JFCU-FIU also receives and responds to requests for assistance (typically from overseas units on AML/CFT enquiries), as well as miscellaneous information reports from a variety of sources.

3.42 As a matter of law (Article 34 POCL), consent must be obtained from the AG to disclose SAR intelligence outside Jersey for the purposes of criminal proceedings/investigation outside Jersey or to a competent authority outside Jersey. However, in practice, the JFCU-FIU disseminates intelligence spontaneously and upon request under the authority of the AG's Guidelines which give broad consent to share intelligence, particularly to other FIUs

belonging to the Egmont Group. Where the JFCU is in any doubt, or where, even in circumstances where JFCU is authorised to make a disclosure it would prefer to obtain AG's specific agreement, then it may approach the AG on individual case basis. The JFCU-FIU can also request intelligence from overseas units (via the Egmont Group), law enforcement agencies and the JFSC.*States of Jersey Police (SoJP)*

3.43 The allocation of financial crime investigations within the SoJP is dependent upon the value and complexity of the crime. Certain frauds (and related ML cases) are likely to be investigated by the Serious Crime Unit (SCU) and domestic high value illicit drug trafficking investigations by the Priority Crime investigation team (PCT).

3.44 JFCU - Operations is responsible for the investigation of higher level, more complex predicate fraud, corruption and ML/TF and asset tracing cases that may impact on the integrity of Jersey's financial sector.

Jersey Customs and Immigration Service (JCIS)

3.45 JCIS has a team of officers working within JFCU-Operations who have responsibility for asset-tracing investigations that run parallel to drug trafficking investigations. JCIS also conducts asset-tracing investigations where commercial importations of illegal drugs are involved.

3.46 JCIS also has responsibility for policing the Island's border, including under Part 5A of the Customs Law.

Jersey Financial Services Commission

3.47 The JFSC is an independent statutory body established under the Financial Services Commission (Jersey) Law 1998 (Commission Law).

3.48 The JFSC is the supervisor for AML purposes, tasked with monitoring and supervising compliance by FIs and DNFBPs with AML obligations. The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (Supervisory Bodies Law) provides the JFSC with supervision powers with regard to AML/CFT matters. Article 5 provides that the JFSC is to be the supervisory body to exercise supervisory functions in respect of any regulated person and in respect of any supervised business carried on by that regulated person.

3.49 Supervisory powers are established by Article 8 of the Supervisory Bodies Law, which gives the JFSC power to do anything that is calculated to facilitate, or that is incidental or conducive to, the performance of any of its functions under that Law. This includes a general power to conduct reasonable routine examinations. The JFSC is also able to require the provision of information and documents under Article 30, to conduct investigations under Article 31, and, with appropriate authority, to enter and search premises under Article 32.

Entry Controls

3.50 Dependent upon the type of financial services business to be provided, a person may need to apply to the JFSC for registration under at least one of the laws. The JFSC will undertake a 'fit and proper' assessment of such applications in line with the relevant legislation, its published licencing policies and guides.

3.51 Specifically, the JFSC is required under law to satisfy itself that the applicant is fit and proper to be licenced having regard to:

Integrity, competence, financial standing, structure and organisation of the applicant;

Persons employed by or associated with the applicant for the purposes of the applicants business or principal persons in relation to the applicant

Description of the business which the applicant proposes to carry on.

3.52 The JFSC will also take account of the Sound Business Practice Policy.

3.53 Such standards apply at an entity level but also for certain classes of business at an individual level where the individual is proposed to hold a principal personal for key person role (compliance office, money laundering reporting officer and money laundering compliance officer).

Approach to Supervision

3.54 The JFSC's approach to supervision is risk based and has been in place since 2016.

3.55 In its risk-based approach, impact (the potential harm that could be caused) and probability (the likelihood of a particular risk occurring) are combined to give a measure of the overall risk posed to the JFSC's Guiding Principles. This is then compared to appetite for risk to prioritise and select the appropriate response.

3.56 Regulated entities are categorised in three current approaches to supervision – enhanced, proactive and pooled. Regulated entities categorised as enhanced and proactive have a dedicated named supervisor and are subject to a higher level of supervision. Those categoised as pooled are supervised on a collective basis, with a team of supervisors responding to risks outside appetite.

3.57 The JFSC supervises via desk-based supervision and on-site examinations. A dedicated team of examiners, the Supervision Examination Unit, undertakes thematic examinations, entity examinations and risk led examinations. In 2019, the JFSC established an additional examination unit, the Financial Crime Examination Unit, as a specialist team to undertake comprehensive financial crime examinations.

3.58 The JFSC also launched a new risk model in 2018 in support of its approach to risk-based supervision. The overarching vision of the Risk Model is to deliver a solution that will allow the JFSC to centrally capture relevant up-to-date entity information and allocate resources to the highest areas of regulatory risk.

3.59 The JFSC can use a number of powers to sanction failure to comply with AML/CFT requirements. Inter alia, it can:

- Apply a civil financial penalty for a breach of the AML/CFT Code of Practice (Article 21A of the Commission Law). However, a civil penalty can only be issued against lawyers, accountants, estate agents, high value dealers and those persons carrying on a regulated business i.e. registered with the JFSC under one or more of FS(J)L, BB(J)L, IB(J)L, CIF(J)L and AIF Regs

- Revoke a previously granted registration (Article 18 of the Supervisory

Bodies Law).

- Apply a condition to the registration (Article 17 of the Supervisory Bodies Law).
- Issue a direction to do, or cease doing, "something" (Article 23 of the Supervisory Bodies Law). This includes the power to require that any individual: (i) not perform a specified function (or any function at all); (ii) not engage in specified employment (or any employment at all); or (iii) not hold a specified position (or any position at all).
- Apply to the Royal Court for the issuance of an injunction restraining a person from committing (or continuing or repeating) the contravention (Article 24 of the Supervisory Bodies Law).
- Issue a public statement in a variety of circumstances (Article 26 of the Supervisory Bodies Law).
- Apply to the Royal Court for intervention in defined circumstances (Article 25 of the Supervisory Bodies Law).

3.60 In addition, the JFSC also operates the Companies Registry which registers Jersey companies, partnerships, foundations and business names, administers the Control of Borrowing Law.

Viscount and Viscount's Department

3.61 The Viscount is the executive officer of the Royal Court and they also carry out other functions such as being the executive officer of the States and administering bankruptcies, juries, and being the Coroner for Jersey). The Viscount's Department is therefore principally required to execute orders of the Courts. The Viscount enforces saisie judiciaires, manages civil asset recovery orders and property restrained or forfeited under the Forfeiture of Assets Law. The primary duty of the Viscount is to ensure that the assets are realised in such a manner as enables orders to be paid.

Judicial process

3.62 Complex financial crime cases are heard before a court consisting of a legally qualified judge and: (i) in the case of statutory offences (ML and breaches of the Money Laundering Order) and asset forfeiture, the judge is joined by two Jurats (full time lay judges) who are the fact finders; and (ii) in the case of customary offences (fraud, perverting the course of justice etc.) the fact finders are a jury of 12 citizens.

Multi-agency approach

3.63 The JFCSG is responsible for co-ordinating the actions of the Island to mitigate the risk of financial crime. The Group is expected to: (i) co-ordinate actions to assess risks, to develop policies and apply resources aimed at ensuring the risks of financial crime to Jersey are mitigated effectively; (ii) ensure that national AML/CFT policies, informed by the risks identified, are regularly reviewed; and (iii) act as the coordination mechanism that is responsible for delivery and implementation of such policies.

3.64 Interagency cooperation on investigations is promoted through the Tripartite Group, which has overall responsibility for identifying, investigating and prosecuting matters related to ML/TF in Jersey. During the relevant period for the NRA analysis, the Tripartite Group was constituted by: (i) the Strategic Tripartite Group – which comprises the LOD (including ECCU), JFCU-Operations, JFCU-FIU and JFSC - meets quarterly to review all matters related to Strategy; and (ii) the Operational Tripartite Group – which comprises the same agencies and evaluates and considers instigation of criminal or asset forfeiture investigations. In 2019, part i) was disbanded to streamline cooperation and now is constituted by a single group.

International Co-Operation

3.65 Effective international co-operation is essential in tracing proceeds of crime and uncovering the identity and background of criminals. As a member of MONEYVAL and the Egmont Group, Jersey participates in international efforts to combat ML and TF. Mechanisms are in place for providing assistance to other jurisdictions, including mutual legal assistance (MLA), financial intelligence exchange, and co-operation amongst law enforcement and financial regulators. Jersey has a strong record in assisting other jurisdictions in recovering the value of significant illicit assets and returning them.

Mutual Legal Assistance (MLA)

3.66 Jersey has authority to exchange information with counterparts without entering into memoranda of understanding (MoUs).

Financial intelligence exchange

3.67 The JFCU-FIU has authority to exchange information with counterparts without entering into MoUs. Formal MOUs have been entered with 8 overseas counterparts.

3.68 As a member of the Egmont Group, the JFCU-FIU works worldwide with other units to support cross-jurisdictional law enforcement and intelligence exchange. In addition, the JFCU-FIU provides assistance to overseas law enforcement authorities whenever appropriate. JFCU-FIU officers participate in Egmont Group meetings with a view to exchanging financial intelligence and sharing experience.

Law enforcement

3.69 Jersey is a member of the Camden Asset Recovery Inter-Agency Network (CARIN).

3.70 The LOD participates in Jersey's representation at MONEYVAL, providing an assessor for one mutual evaluation under the current round of assessments.

Regulatory co-operation

3.71 The JFSC is a member of the International Organisation of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS), the Enlarged Contact Group on the Supervision of Collective Investment Schemes (ECG) and the Group of International Insurance Centre Supervisors

(GIFCS).

3.72 It is a signatory to the GIFCS, IOSCO and IAIS multilateral MoUs, which are global information-sharing arrangements among supervisors that facilitate cross-border enforcement. The JFSC participates in Jersey's representation at MONEYVAL, providing an assessor for mutual evaluations under the current round of assessments and recently seconding a member of staff to the secretariat for 18 months.

3.73 The Supervisory Bodies Law does not require bilateral agreements to be in place in order to co-operate internationally. The JFSC has, however, concluded numerous bilateral MoUs and letters of intent with overseas supervisors. A summary of bilateral memoranda is published on the JFSC's website[17]. The purpose of each memorandum is to establish an agreed mechanism under which both signatories commit to using their statutory powers of co-operation.

3.65 The JFSC co-operates and coordinates with counterparts in supervising firms regulated by multiple authorities and participates in supervisory colleges which share information and develop better understanding or risk profiles and activities of globally active firms.

[17] https://www.jerseyfsc.org/industry/international-co-operation/memoranda-of-understanding/international-memoranda-of-understanding/

SECTION 4

Risk Assessment Methodology

4.1 This chapter outlines how Jersey has approached its national risk assessment (NRA).

Introduction

4.2 Work on the NRA started in September 2017 with the appointment of an individual to lead the Island's work on the NRA. The NRA process has involved three stages: (i) introductory workshop (May 2018); (ii) assessment of threat and vulnerability using assessment tools (June 2018 to August 2019); and (iii) wrap-up workshop (November 2019).

4.3 The Government of Jersey has taken a lead role in coordinating the NRA, which has involved: (i) key government departments; (ii) public sector agencies, e.g. the JFSC, JFCU and Law Officers' Department (LOD); and (iii) the private sector.

4.4 It should be noted that the progress of the NRA has been disrupted by significant changes in Government resource and notably change in individuals leading the work on the NRA. This has meant that the project has taken 12-18 months longer to reach completion than was initially planned. The impact of COVID-19 from March 2020 onwards also caused further delay to the work required to progress the publication of the NRA report.

4.5 Despite publication in September 2020, it should be noted that the majority of analysis work for the NRA was conducted in 2018 and 2019. Data relevant to the activity of the authorities in the Threat module was predominantly taken from authority level data. The relevant period for authority data is 2013-2017.

Assessment Tools

4.6 The NRA tool defines risk as the product of money laundering (ML) threat and national ML vulnerability and consists of the following modules:

- ML threat.
- National ML vulnerability.

THE TOOL FOLLOWS THE DEFINITION OF ML/TF RISK

4.7 Sectoral assessments of ML vulnerability for: the banking sector; securities sector; trust and company service provision (TCSPs); other financial institutions (FIs), e.g. lenders and bureaux de change; and Designated Non-Financial Businesses and Professions (DNFBPs), e.g. lawyers, accountants and estate agents. Ratings (low, medium-low, medium, medium-high and high) are assigned to ML threats and vulnerabilities to generate results that can be represented graphically on a risk-level heat map.

ML threat

4.8 Inter alia, the ML threat module calls for: (i) compilation of a list of predicate offences that are considered most relevant on the basis of legislation and prevalent criminal behaviour patterns within the jurisdiction; (ii) collation of enforcement data about these predicate offences and ML cases related to these predicates; (iii) systematic collection of detailed information from available ML cases in order to analyse trends and patterns of ML; and (iv) compilation of data on economic and business relationships with other jurisdictions. Given the limited number of ML cases in Jersey, data has also been complied on suspicious activity reports. All of this data supports an analysis of the types of criminal proceeds found in Jersey, origin of predicate offences (domestic or foreign), sectors involved in ML, and cross-border threats.

National ML vulnerability

4.9 National ML vulnerability is determined by: (i) the overall ML vulnerability of the various sectors – banking, securities (split between funds and investment business), TCSPs, other FIs and other DNFBPs – weighted to reflect sector significance; and (ii) the national ability to combat ML. The Island's ability to combat ML at national level is based on assessments of 22 "input variables", which include quality of AML policy and strategy, quality of FIU intelligence gathering and processing, and capacity and resources for investigations and prosecutions. For each variable, the NRA tool sets out the criteria that are to be used to assess vulnerability and suggests possible sources of data.

Sectoral assessments of ML vulnerability

4.10 Sectoral assessments of ML vulnerability take account of two types of variables: (i) general AML control variables; and (ii) inherent vulnerability variables. The former relate to the quality, effectiveness and level of general AML controls at sectoral level, e.g. comprehensiveness of the AML legal framework and effectiveness of supervision procedures and practice[18]. The latter considers whether certain products and services are inherently more vulnerable to ML. This increased vulnerability may arise from characteristics of the product or service, or clients. For both sets of variables, the NRA tool sets out the criteria that are to be used to assess vulnerability and suggests possible sources of data.

4.11 Where products and services offered in a particular sector are considered to present different inherent vulnerabilities, then sectoral assessments should take account of these differences. The following products and services have been identified as presenting different inherent vulnerabilities.

Table 4.1: Products and services presenting different inherent vulnerabilities

Sector	Products and services
Banking	Retail Banking (Local/International) Private Banking (Local/International) Corporate Banking (Trading/Large/Global /TCSPs)
Securities – funds	Public Funds Legacy Private Funds Unregulated Funds Jersey Private Funds
Securities – investment business	Independent Financial Advisors (IFAs) Wealth Managers/Non-IFAs
Securities – funds	Trust & Company Services Private Trust Company Services Limited Services Other Services

4.12 A number of factors determine the assessment of the national ability to combat ML and vulnerability of each sector, in particular: (i) assessment ratings for each of the variables; (ii) the relative weight attached to those variables (which is built into the NRA tool); and (iii) the underlying relationships between each of the variables (again this is built into the tool).

Sectoral assessments of ML vulnerability

4.13 Whilst the NRA tool assesses the vulnerability of the TCSP sector in Jersey, it does not address the extent to which legal persons and legal arrangements themselves (not all of which are administered in Jersey by TCSPs) present ML vulnerabilities.

4.14 Consistent with the NRA tool, the approach followed has been to: (i) identify the extent to which legal persons and arrangements that can be established under Jersey legislation may be more inherently vulnerable to ML; and (ii) consider the quality, effectiveness and level of general AML controls.

[18] For banking and securities, there are 13 general AML control variables. In other sectors there are 12.

4.15 During the period of conducting the NRA, authorities started a piece of work looking at the ML risks associated with legal persons and arrangements in addition to the modules set out in the World Bank model. This work will inform an ongoing workstream which will include a full assessment of the risks posed by legal persons in line with FATF Recommendation 24. It is anticipated work on this will be ready for publication in 2021.

Wider economy ML risks

4.16 Whereas the focus of the NRA tool is on products and services that are already regulated and supervised for AML/CFT purposes, the NRA report considers the following vulnerabilities in the wider economy: (i) prevalence and use of family offices; (ii) use of financial technology; (iii) operation of shipping and aircraft registries; (iv) promotion of residence/citizenship by investment schemes; (v) global activities of Jersey-headquartered mineral extraction companies; and (vi) use of security issuance vehicles.

4.17 Further work on family offices, aaircraft registry and ship registry has not been completed but will form an ongoing workstreams for risk analysis which will be progressed as part of Jersey's future ongoing process of ML risk assessment.

Data Collection

4.19 The ability to conduct a sound and robust analysis and develop a thorough understanding of the ML/TF risks that Jersey faces relies heavily on the collection and analysis of an extensive amount of data. Assessment tools require quantitative and qualitative data to be provided by: (i) the public sector, in particular the JFSC, JFCU and LOD; and (ii) the private sector (see also private sector involvement below).

4.20 Issues concerning data availability and sufficiency of data are outlined in the Introduction to this report.

Aggregated data from JFSC

4.21 Quantitative data collected by the JFSC in order to support risk-based supervision has been shared using statutory information sharing gateways. The JFSC has collected this data for 2017 and 2018 and it covers the vast majority of FIs and DNFBPs operating in Jersey. Sectoral data has been aggregated such that it is not possible to identify underlying FIs and DNFBPs.

4.22 The introduction of data to support risk-based supervision has coincided with the NRA. For many, this was the first time that comprehensive data had been collected to support risk-based supervision and so data has been complied and submitted to the JFSC on a best efforts basis.

Private sector survey

4.23 Other data has been collected through a Government survey (2018). The broad objectives of the survey were to obtain a better understanding of private sector perceptions of:

- How it complies with existing AML/CFT requirements;

- The compliance culture that prevails amongst FIs and DNFBPs;
- The supervision and enforcement in Jersey of AML/CFT requirements;
- Enforcement of AML/CFT requirements by law enforcement agencies; and
- Threats and vulnerabilities that may exist.

4.24 137 organisations responded to the survey in respect of at least 231 business registrations; this represents a response rate of 32%, which is typical of business surveys of this nature. Most responses came from FIs and DNFBPs employing larger numbers of staff. Conversely, there was a poor response from lawyers, accountants and estate agents, particularly those operating as sole practitioners.

Consulting firms

4.25 Jersey-resident consulting and legal firms have also provided input into the NRA in order to better understand: (i) the extent to which ML/TF risk is managed and effective corporate governance arrangements are in place; (ii) matters that FIs and DNFBPs struggle, or request assistance, with and why; (iii) how the JFSC and law enforcement agencies administer AML/CFT legislation; and (iv) ML/TF threats and vulnerabilities.

International co-operation

4.26 The NRA has also collected information from competent authorities outside Jersey on their international co-operation experience with Jersey counterparts. Only a limited number of responses were received to requests for feedback on co-operation.

Other sources

4.27 In order to provide context for NRA discussions and report drafting, the following data has been considered:

- Credible reports and studies of proceeds generating offences, ML, TF etc. that will be relevant to the NRA; and
- Relevant media coverage.

Relative Importance of Sectors

4.28 determining the ML threat that is presented by different sectors, the NRA tool calls for the size of sectors and/or their share in the economy to be taken into account. The NRA tool calls for sectors of financial activity that are most important to a country's economy to be appropriately weighted when determining the overall ML vulnerability through aggregation of sectoral control assessments.

4.29 The following data has been used in order to assess size/share and importance: (i) GVA per sector published by Statistics Jersey; (ii) average headcount per sector – published by Statistics Jersey; (iii) revenue per sector – published by Statistics Jersey; (iv) total number of beneficial owners and controllers; and total assets under management by sector. The following table sets out how each sector has been assessed.

Table 4.2: Size of sectors and/or share in economy

Sector	Size/share/importance
Banking	High
TCSPs	High
Securities – funds	High
Securities - investment business	Medium High
Accountancy Services	Low
Legal services	Medium
Casinos	Low
Estate agents	Low
Money service business	Low
Lending	Low
Other FI activities	Low
Insurance	Low

Private Sector Involvement

4.30 The NRA tool strongly recommends that the private sector (representatives of FIs and DNFBPs) should be involved in sectoral assessments of ML vulnerability. Such an approach ensures that industry's perspectives are taken into account in assessing risk and also raises awareness of the NRA, which is important as FIs and DNFBPs are amongst the primary audience of the NRA report. In many countries, this involvement in itself has helped to enhance the public/private sector dialogue and co-operation in the area of AML/CFT.

4.31 Industry has participated through: (i) membership of sectoral teams – where participants have provided information at regular meetings (which is one source of evidence for assessing variables); and (ii) the Government survey.

4.32 The feedback from the private sector (and the public sector) during the NRA process and subsequently has been very positive with views expressed that the public-private sector dialogue had been constructive and had helped to enhance cooperation and risk awareness.

Academic Involvement

4.33 The Government of Jersey also decided to include the impact of a leading academic on economic crime in the process of risk assessment analysis. Professor Bill Gilmore is a leading academic whose more recent research has focused on the law and practice of transnational criminal legal co-operation. His publications in this area cover such matters as money laundering, extradition, and mutual assistance in criminal investigations. Professor Gilmore is a previous 'Scientific Expert' to MONEYVAL and in December 2017 he was awarded the medal of honour of the Council of Europe (Pro Merito) for his contribution to international efforts to combat money laundering and the financing of terrorism. The Government of Jersey is grateful to Professor Gilmore for his contribution to process.

Limitations of the Assessment

4.34 The assessment faced a number of limitations as outlined below:

- National risk threat data available to Authorities (relevant to part A of the NRA) covers 2013-2017. Aggregated sectoral data (relevant to the sectoral analysis in part B of the NRA) used 2017 and 2018 data. Data is being collected on an annual basis moving forward to support updating the NRA going forward.

- Law enforcement agencies maintain data on separate standalone systems and there is no centralised database of suspicious activity reports, investigations, prosecutions and confiscations that could be accessed.

- It should be noted that throughout the process of the NRA, working groups were established to consider each section and worked on the basis of consensus to reach agreement on ratings. An exercise of moderating these modules and groups to achieve consistency of ratings centrally was not undertaken during the NRA process. There is therefore some inconsistency in ratings (which is also compounded by data set differences), particularly across the sectoral modules. However, it remains possible to draw out general themes from the analysis.

- The duration of the total assessment process (2017-2020) and publication in September 202 was too long. This has resulted in publishing a report which, in part, may seems historic and based on non-recent data.

SECTION 5

Residual Risk

5.1 This chapter outlines how Jersey has considered the overarching national risk assessment (NRA) residual risks. The assessment has considered the entire NRA process and provides a table of 10 residual risk findings which Jersey should prioritise and action.

5.2 Jersey's main risks are heavily influenced by the sectors and jurisdictions in which key business relationships are conducted. As an IFC, Jersey has a significant exposure to cross-border threat, as outlined in the threat module. The cross-border threat is further increased by a more recent focus on specific jurisdictions with which Jersey is building business relationships for international finance. A number of these jurisdictions present risks to Jersey due to vulnerabilities in their domestic regimes which allows criminality to occur with proceeds potentially being transferred to Jersey for ML.

5.3 As described in Chapter 5 (Risk Assessment Methodology), Risk is the product of national ML threat and national ML vulnerability which also brings together the analysis of sectoral modules. The process of determining Residual Risk is a more holistic process which looks to consider where the greatest risks lie when considering these factors together and therefore where the higher level of action should be prioritised. It should be noted that throughout the process of the NRA, working groups were established to consider each section and worked on the basis of consensus to reach agreement on ratings. An exercise of moderating these modules and groups to achieve consistency of ratings centrally was not undertaken during the NRA process. There is therefore some inconsistency in ratings (which is also compounded by data set differences), particularly across the sectoral modules. However, it remains possible to draw out general themes from the analysis which have formed the basis of the Residual Risks highlighted in this chapter. In the future, during the ongoing process of ML risk assessment, a mechanism to achieve consistency across future ML sector risk rating will be developed alongside the ongoing risk assessment and data collection work.

5.4 In considering residual ML risk in Jersey, the predominance of the TCSP and banking industry must be considered, where private wealth activities are inherently more likely to be at risk of ML. Equally the size of the Securities sector should be noted and consideration should be given to what may be a more limited understanding of how that sector is exposed to ML risk (both internationally and in Jersey). There is also the involvement of lawyers to consider, where they are particularly exposed to corporate structuring in higher risk areas (PEPs, complex structures, cross-border transactions) and the risks they pose is inherently interlinked to the private wealth industry.

5.5 The below table outlines the vulnerabilities Jersey faces at a national level, displaying the assessed strength of various aspects of the framework that act as mitigating controls/factors which are rated according to their effectiveness. A low score represents a weak control and thus a potential vulnerability.

Table 5.1: National Vulnerability Table

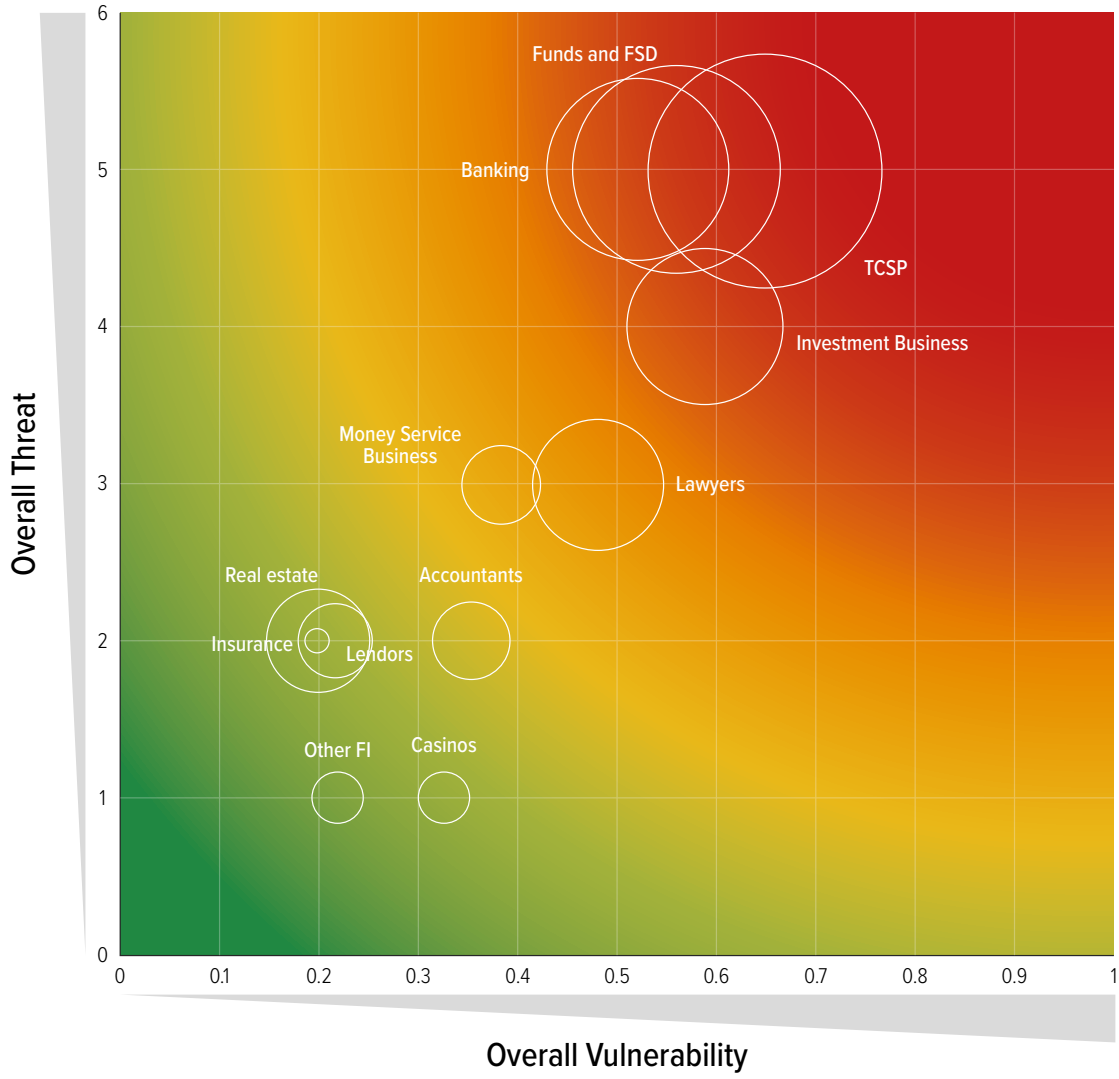
Quality of AML policy and strategy 0.4	Effectiveness of ML Crime definition 0.9	Comprehensiveness of Asset Forfeiture Laws 0.7	Quality of FIU Intelligence Gathering and Processing 0.4
Capacity of Resources for Financial Crime Investigation (Including Asset Forfeiture) 0.5	Integrity and independence of Financial Crime Investigators (Including Asset Forfeiture) 0.9	Capacity and Resources for Financial Crime Prosecutions (including Asset Forfeiture) 0.7	Integrity and Independence of Financial Crime Prosecutors 0.9
Capacity and Resources for Judicial Processes (including Asset Forfeiture) 0.7	Integrity and Independence of Judges (including Asset Forfeiture) 0.9	Quality of Border Controls 0.8	Comprehensiveness of Customs Regime on Cash and Similar Instruments 0.7
Effectiveness of Customs Controls on Cash and Similar Instruments 0.6	Effectiveness of Domestic Cooperation 0.6	Effectiveness of International Cooperation 0.5	Availability of internal audit 0.7
Level of Financial Integrity 0.8	Effectiveness of Tax Enforcement 0.5	Level of formalisation of the economy 0.9	Availability of Reliable Identification Infrastructure 0.8
Availability of Independent Information Sources 0.6	Availability and Access to Beneficial Ownership Information 0.7		

5.6 The sectoral risk assessment produced a series of outcomes based on control vulnerabilities sector by sector which are described in Part B of the report. The decision was taken not to apply the full WB methodology to certain sectors due to their relative size in Jersey. It should be noted that these were produced by consensus only within the individual working groups and therefore the lack of a consistent mechanism to regularise the ratings across sectors (highlighted above) means that caution should be taken in comparing sector by sector.

5.7 The World Bank NRA tool produces the following heat map to highlight the risks associated with the various financial services sectors. The resultant diagram is based on the following:

- importance of the sector to Jersey (represented by size of the "bubble")
- the vulnerability rating (X axis)
- threat rating for each sector. (Y Axis)

Residual Risk 'Heatmap' for Jersey



5.8 The above heat map is generated using the World Bank methodology and provides a general overview of where money-laundering risks lie in Jersey.

5.9 It is important to note that the map provides only a generalised graphic representation of ML risk across the ecosystem in Jersey. It does not illustrate, at a detailed level, the specific levels of types of risk that exist inside a specific sector and reference should be had to the sectoral chapters in this regard.

5.10 Overall, the heat map is an indicator of the risk of money laundering occurring in a particular sector having regard to both threat and vulnerabilities. It should not

be used as a comparison with other jurisdictions and should be considered only in the context of Jersey for this report.

5.11 Given the type of activity undertaken by an IFC, Jersey is more likely to be exposed to the "layering" stage of money laundering – which typologies indicate regularly involve Banks, TCSPs or Funds - rather than the "placement" stage.

5.12 Considering the Threats and Vulnerabilities together, along with the context of Jersey, ten residual risks have been developed which describe the initial areas of greatest focus for ML when considering the totality of the NRA process to date.

5.13 The below table also looks to categorise these risks with consideration of two additional factors:

i) Sectoral Focus

ii) Foreign/Domestic factors

5.14 In respect of sectoral focus, the table looks to highlight whether the risk relevant across all sectors or has a sector specific focus. For example, a risk relevant generally to an authority (LEA Co-operation with other jurisdictions) will be relevant for all sectors, however, a risk that has a sector specific focus (understanding of ML risk in key market areas) may be directed towards only specific sectors (TCSP, Banking etc.).

5.15 Given the nature of Jersey as an IFC, the risks are also heavily influenced by risks emanating from other jurisdictions. Therefore, the risk has been categorised as to whether it is a foreign risk, domestic risk or both – where the risk is foreign or both there will be the need to engage with authorities outside Jersey to mitigate such risks.

Table 5.2

Overarching Residual Risk	Sectoral Focus	Foreign/Domestic/Both
The Authorities understanding of ML risk is not developed to a sufficiently granular level to fully understand ML risk in key market sectors	TCSP Banking Funds & FSB Lawyers	Both
Available data collected is not uniform or sufficient to monitor ongoing ML risk	All	Both
For both authorities and industry, there is not a fully developed understanding of the risk specific jurisdictions pose to Jersey in respect of cross-border ML risk	TCSP Banking Funds & FSB Lawyers	Foreign Specifically, but not limited to, the following countries: HKC, India, Ireland, Kenya, Russia, Switzerland, UAE, UK, USA
Policy development is not sufficiently resourced or agile enough to fully develop and co-ordinate a policy response to emerging threats faced by Jersey as an IFC	All	Both

LEA Co-operation with jurisdictions where common predicate offences occur still requires development to pursue effective ML investigations and prosecutions in Jersey.	All	Foreign Specifically, but not limited to, the following countries: India, Kenya, Russia, Switzerland, UAE
For both authorities and industry, the understanding of specific topics relevant to ML is still developing and is uneven in key industry sectors most exposed to those risks – this is exacerbated by the limited understanding of ML risk in common foreign markets with which Jersey interacts. Specific topics of note are: PEPs Complex Structures Specific Funds ML risk	TCSP Banking Funds & FSB Lawyers	Foreign
The Quality of Intelligence available to the FIU, combined with processing challenges and resource constraints means that Jersey has yet to fully resource financial crime investigation. It therefore remains challenging to identify, investigate and prosecute ML in areas that present the greatest threat to Jersey such as cross-border ML threat. This is exacerbated by foreign co-operation risks outlined in Risk 5.	All	Both (Foreign more significant)
The effectiveness of tax enforcement and co-operation may indicate challenges in identifying and investigating tax evasion as a common predicate offence presenting a risk to Jersey significant sectors	TCSP Banking	
The supervisory approach is not fully tailored to higher risk sectors and themes in order to effectively mitigate ML risk	TCSP Banking Funds&FSB	Both
Typologies of ML and guidance for specific important sectors, combined with outreach is required to ensure the industry fully understand the ML risk in those sectors	TCSP Banking Funds & FSB Lawyers	Both

SECTION 6

Recommended Actions

AML Policy & Strategy	1. Policies and procedures around civil/criminal enforcement should be amended to ensure parallel ML investigations occur whenever international predicate offences are identified and there is a link to a domestic individual or regulated entity. 2. Determine whether there are specific reasons for the lack of data available in evidencing ML investigations and introduce policies to address these reasons if appropriate. 3. Review the current legal framework for imposition of sanctions for breaches of AML/CFT obligations; and make changes where necessary to facilitate the imposition of effective, proportionate and dissuasive sanctions where appropriate. 4. Improve the MLO to allow for criminal and civil sanctions to be effectively taken. 5. Ensure Policy development is sufficiently resourced and agile enough to fully develop and co-ordinate a policy response to emerging threats faced by Jersey as an IFC 6. In order to better understand the ML Threat posed by the main jurisdictions with which Jersey does business, a detailed analysis of those jurisdictions should be undertaken and the risk profile for each of the jurisdictions should be set out in one document which is maintained on an ongoing basis and accessible to all agencies. 7. Develop an Island strategy to prioritise and drive forward key areas of ML/TF risk and policy for Jersey.

Data Gathering	8. The collection of data can be improved and enhanced by introducing various measures, including: • A standard template to record data across all relevant LEAs and departments • Updating the SAR portal template to collect adequate and consistent information (e.g. distinguish between domestic and foreign predicates). • Supplementing and/or expanding data collection to allow agencies to better understand potential risks (e.g. the use of PTCs) 9. Consider how data sharing between law enforcement agencies can be improved.
International Co-operation	10. Jersey LEAs should work to actively encourage better collaboration with other jurisdictions to facilitate increased exchange of information with those jurisdictions.
Supervision	11. Ensure that the higher risk sectors and themes are taken into account when developing ongoing AML/CFT supervisory approaches.
Investigation and Prosecution	12. Introduce national-level training to LEA's, prosecutors and judiciary to enhance their understanding of the local AML regime and the ability to prosecute ML offences in full. 13. Consider better aligning investigation and prosecution resources across supervisory and law enforcement agencies 14. Address the challenges currently faced by the FIU when identifying, investigating and prosecuting ML (namely, poor quality of Intelligence available, processing challenges and resource constraints). 15. Determine what challenges are being experienced in identifying and investigating tax evasion as a common predicate offence.

Guidance / Communication	16. Communication with Industry should be enhanced by: • Increasing the feedback given to industry on the outcomes of SAR reporting; • conducting trend analysis and communicating themes and typologies to industry; • conducting and/or publishing more granular and detailed trend analysis 17. Public statements regarding enforcement action should include: • sufficient details of the behaviour and actions of the entities/individuals to dissuade similar behaviour • reference the relevant provisions of the regulatory codes and aligning with AML codes and Money Laundering Order that may have been breached 18. Agencies to consider publication of statistics of public and non-public sanctions, and trend / theme analysis of breaches. 19. Industry Guidance should be supplemented to include additional information in respect of AML red flags and risk factors 20. As new and emerging risks are identified such as the use of VASP's and/or Fintech, relevant typologies should be issued. Equally, further typologies should be produced on high risk areas, such as PEP Relationships and complex structures.
Legislation	21. The statutory AML/CFT framework should be reviewed with regard to the definitions of activities subject to the AML/CFT regulatory regime. This may include clarifying activities captured (e.g. revising the definitions of "estate agency services") and considering whether additional activities (e.g. property development) should be captured for AML/CFT purposes in line with the FATF standards. 22. The current statutory exemptions and concessions from AML/CFT obligations should be reviewed to determine: • if the existing exemptions are demonstrably justifiable; • whether any further exemptions should be added; and • whether the way in which the use of exemptions are notified, reported and/or recorded is appropriate.

SECTION 7

National Money-Laundering Threat

Introduction & Methodology

7.1 The money laundering (ML) threat faced by Jersey was reviewed against data from various sources within the jurisdiction[19]. The data recorded from Law Enforcement Agencies (LEAs) and their partners was limited to a time period of 2013 – 2017. In module 1B of the World Bank (WB) model all reported and recordable offences that generated proceeds in excess of GBP 10,000[20] were documented.

7.2 The data used in the threat analysis was also not consistently recorded in the same format across the relevant departments, and this limitation should be recognised. Where there are gaps in data, other sources of information such as Moneyval mutual evaluation reports (MERs), international co-operation surveys[21] and suspicious activity reports (SAR) intelligence has been relied upon in order to formulate overall assessment of threat.

7.3 As an IFC, the majority of Jersey's customer base is non-resident (by number and value). Accordingly, activities that result in funds being held in Jersey will take place largely outside the jurisdiction and it follows that a large majority of predicate offending will have been committed outside of the island, with the proceeds potentially being placed and laundered through local institutions[22].

7.4 The threat assessment, therefore, focusses mainly on the international ML threat, although the domestic threat has also been considered.

7.5 The assessment of Jersey's ML threat includes an assessment of:

Foreign Predicate Criminality

The assessment of foreign predicate offences relied upon other sources of data and publications such as information held by authorities, other countries national risk assessments (NRA's) and MER's as the data obtained as part of this assessment highlighted that there were predominately more case studies available on domestic threat, than that of international threat.

19 Including from the Joint Financial Crime Unit (JFCU) and the Financial Intelligence Unit (JFCU FIU) of the States of Jersey Police (SOJP); the Law Officers' Department (LOD); Jersey Customs and Immigration Service (JCIS); Jersey Financial Services Commission (JFSC); Statistics Jersey and Revenue Jersey).

20 Where this was possible to establish

21 A feedback document sent out to jurisdictions that Jersey had recent contact with and where there has been information exchange. Agencies that sent this document out were FIU, LOD (MLA team), JFSC.

22 Evidence of this is seen in the cases relating to Gichuru and Windward Trading, where assets obtained through bribery and corruption were moved from Kenya out of the reach of further corrupt officials into a safe haven, to be managed out of direct reach of the Kenyan authorities.

Cross-border Threat

The working group used the WB module form on cross border activity as a starting template and then applied further criteria deemed relevant to Jersey. The product of

this assessment was a list of countries that may be considered to present a threat to Jersey (or vice versa). To the extent that any of these countries were financial centres, it was important to consider also whether there were strong links between such centres and any jurisdictions which may be considered to present a higher risk for ML purposes.

Domestic ML Threat

A number of predicate offences were recorded during this period. Local crime data provided by SOJP and the LOD was analysed and compared to the FATF designated categories of offences list[23] and all relevant local offences that were proceeds of crime generating over GBP 10,000 were collated and used in the assessment. All reported ML investigations were based upon domestic predicate offending[24].

Foreign Predicate Offences

Overview

7.6 As explained above, financial intelligence rather than criminal investigations has been used predominantly to identify the types of foreign predicate offences that are laundered in Jersey. This is because there are only a very small number of investigations and prosecutions for ML where predicates have taken place outside Jersey.

7.7 Between 2013 and 2018, 8,091 spontaneous dissemination reports relating to financial intelligence were shared via the Egmont Secure Web (ESW). The spontaneous disseminations are based upon intelligence received from SAR reporting to the FIU, this is analysed and disseminated to the most relevant jurisdiction(s) that would benefit from receipt of this information. The aim is to assist any predicate crime investigation in their jurisdiction and to open dialogue with that jurisdiction in order to explore the possibility of positive action that can be taken in Jersey where the proceeds of crime may be located. This also looks to identify where domestic criminality may have occurred so that further investigation can occur.

7.8 During 2013 – 2017, 1290 Requests For Assistance (RFA's) were received from international jurisdictions via the ESW. These requests can be in the form of a response to a spontaneous dissemination or where the jurisdiction has received intelligence from their financial industry linking their jurisdiction to Jersey.

7.9 Often requests can include but are not isolated to information sought in relation to the beneficial owners of Jersey registered companies and details of the activity of those companies.

[23] http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

[24] Except two, one involving a Romanian OCG (Organised Crime Group) and one report of a standalone ML investigation during this period involving a legal entity (Windward Trading, 2016)

7.10 Jersey also has an agreement with the United Kingdom via an 'Exchange of Notes' to exchange beneficial ownership information in a short time period, or urgently in certain circumstances. Between June 2017 and the end of 2018, 26 requests from the UK were responded to[25].

Information on foreign predicates based on FIU intelligence

7.11 This FIU intelligence indicates that the top criminality suspected relates to tax evasion, fraud and corruption. To better understand these predicate activities, the JFCU-FIU's intelligence database has been reviewed and relevant cases extracted. These cases suggest that the greatest threat to Jersey comes from non-residents seeking to hide the proceeds of corruption and white-collar crime[27] in Jersey.

7.12 In the examples below, a cross section of jurisdictions and suspected offences has been selected to identify what type of intelligence was typically received during this assessment period. There are examples where despite the suspicion of domestic criminality and effective sharing of intelligence with international jurisdictions, none of the examples resulted in any prosecution of individuals or regulated entities in Jersey.

7.13 In the examples below, a cross section of jurisdictions and suspected offences has been selected to identify what type of intelligence was typically received during this assessment period. There are examples where despite the suspicion of domestic criminality and effective sharing of intelligence with international jurisdictions, none of the examples resulted in any prosecution of individuals or regulated entities in Jersey.

7.14 The reasons for lack of investigation or prosecution in these specific cases included: lack of support or corroboration of intelligence by international jurisdictions and insufficient evidence to progress an investigation to a criminal or civil standard.

7.15 The following cases are examples compiled between 2013-2017 that featured suspected overseas predicate crimes:

Corruption case 2013

A PEP was linked through open source information to the alleged receiving of bribes in relation to contracts relating to military equipment. Assets held locally were linked to activity in the 1980s (prior to the allegation). Assets were placed into investments managed by a large global asset management company.

Fraud case 2014 – Jersey and UK – Police investigation and prosecution

Intelligence led to an investigation involving a Jersey-based global holiday scam involving members of an organised crime syndicate which made victims believe they were booking holiday apartments in, no services were provided, and money was fraudulently transferred to different accounts under assumed names. Convictions were handed down for fraud and money laundering under

[25] https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-te

[26] White-collar crime is non-violent crime committed for financial gain. According to the FBI, "these crimes are characterized by deceit, concealment, or violation of trust." The motivation for these crimes is to obtain or avoid losing money, property, or services, or to secure a personal or business advantage. Examples of white-collar crimes include securities fraud, embezzlement, corporate fraud, and money laundering.

the proceeds of crime law and one person sentenced in Jersey to 2 years and a second person also received a 10.5-month prison sentence. A legitimate holiday site was hacked by the fraudsters and the proceeds of crime were placed into bank accounts held locally set up with fraudulent identification. Proceeds were then diverted to UK bank accounts and through a local MSB.

Insider dealing Case 2014

The subject of intelligence was a senior employee of a company which was subject to a takeover bid by a rival company. The subject purchased a significant quantity of shares in the company prior to the public announcement of the bid and then sold some of them following the announcement (the price had appreciated by 33%). The remainder were acquired by the new company at the agreed price. In total, the subject made gross profits of GBP 770,223. The alleged proceeds of the insider dealing benefit were traded through a local bank. There was insufficient evidence found to proceed with prosecution and the case was discontinued.

Bribery and corruption case study - Kenya – Police investigation and prosecution

Windward Trading Limited (February 2016): Windward Trading pleaded guilty to four counts of money laundering offences between 1999 and 2001 involving a total of GBP 2,599,050 and USD 2,971,743 respectively. The company received and held the proceeds of criminal conduct perpetrated by its controlling mind and beneficial owner, Samuel Gichuru of Kenya. The company knowingly enabled Samuel Gichuru to obtain substantial bribes paid to him while he held the post of Chief Executive of Kenya Power and Lighting Company, the Kenyan government's electricity utility company. Attempts to extradite Samuel Gichuru and Chrysanthus Okemo continue. No action was taken against the TCSP managing the company. The Royal Court Judgement indicates this was due to the control of the company having changed hands more than once and the TCSP in charge at the time of sentencing was not culpable. The company itself was stripped of all of its assets in confiscation and therefore no further penalty was sought.

Confiscation: GBP 3,281,897.40 and USD 540,330.69.

Corruption Case 2015

Intelligence was received that the subject had made payments to numerous PEPs in Africa to solicit sensitive information from government officials, other prominent individuals and a journalist. The subject's company specialised in political and corporate intelligence for sub-Saharan Africa, advising private and corporate investors. Data obtained was then being provided to those private investors in order to obtain a financial advantage and reward as a result of the information provided. No local investigation was commenced as no cooperation received from oversees jurisdiction to support intelligence. Intelligence was share with relevant overseas authorities.. A local banking entity was used to facilitate the payments to and from PEP'S.

Corruption Case 2015 – Russia and UK

A Russian PEP linked to a state oil company held bank accounts in company names in the UK and Jersey. Transfers were made from UK company accounts to a Jersey company and then a further transfer was made to another Jersey

company account owned by a foreign law discretionary trust. A transfer was then made to the subject's account in a Russian bank. No local investigation commenced. The assets could not be linked to the alleged criminality. Proceeds of the alleged criminality were placed into bank accounts held locally before distribution to Russia.

Bribery and Corruption 2016 – Middle East and UK

The subjects were connected to a company from which their source of wealth emanated. This company was connected, according to adverse media, to bribery and corruption payments linked to an oil company in the Middle East. Investments were made in Jersey administered companies with assets believed to be from the proceeds of that corruption. No local investigation was commenced as no links from the assets could be made to the criminality.

Fraud Case 2016 – USA and Middle East

The subject's company formed an undisclosed joint venture partnership with another middle Eastern company and a US company, and they were awarded contracts they would not have been entitled to, had the joint venture partnership been declared. The joint venture partners are also alleged to have submitted false claims, payment demands, records and statements. A local TCSP provided company administration services to the trust structures for which the funds were received.

Tax

7.16 Tax-related SAR reporting is in the top-three reported crimes suspected by local regulated entities, most relating to suspicion of tax evasion. SARs often report clients taking advantage of tax amnesties.

7.17 In practice, it is difficult to develop typologies for tax evasion, since foreign Investigations tend to be of an administrative rather than criminal nature. Whereas the JFCU FIU will share the relevant tax intelligence with a partner FIU, many requests for assistance are made through Revenue Jersey under tax information exchange agreements, where OECD confidentiality arrangements preclude notification of the FIU by Revenue Jersey. Nevertheless, a significant number of requests were made to provide tax information in the period from 2014 to 2018 which suggests that Jersey is likely to be used to evade foreign taxes. The FIU share tax related intelligence internationally. Challenges exist with identifying oversees tax predicates where the placement and layering of funds is occurring in Jersey and this impacts on identifying potential cases to investigate to a criminal standard hence the lack of investigations and prosecutions across the jurisdiction in this area.

7.18 The Tax Justice Network regularly comment on how extensively jurisdictions contribute to helping the world's multinational enterprises escape paying tax. Jersey has received negative publicity for its use in tax avoidance particularly concerning schemes involving Her Majesty's Revenue and Customs in the UK and the use of complex structures. However, this criticism often fails to note the approach to addressing this risk that Jersey has applied for many years, namely regulating the financial services community, transparency and information exchange.

Mutual Legal Assistance requests

7.19 The Criminal Division of the Law Officers Department deals with Mutual Legal Assistance on behalf of the AG. The work involved in this area includes gathering written and oral evidence for use in overseas criminal or civil asset recovery investigations and proceedings, as well as freezing and confiscating the proceeds of crime and drug trafficking. Data recorded in the Attorneys General's annual reports[28] from 2014 – 2017 provides the following data, 368 MLA's were received from interactions with foreign jurisdictions[29]. Jurisdictions making those were requests were: UK, USA, Australia and from the regions of Asia, Africa, South America and other European countries. The MLA's handled by type of offence indicate that fraud, corruption and money laundering were main types of criminality identified.

7.20 The majority of requests to other jurisdictions are made for the purpose of obtaining evidence from overseas authorities for use in local criminal investigations and criminal prosecutions. However, the AG might also request asset restraint and registration of Jersey Confiscation Orders. In the period 2014 – 2017, 38 requests were sent[29].

[27] https://www.gov.je/government/nonexeclegal/lawofficers/Pages/index.aspx
[28] 2014 – 89, 2015 – 97, 2016 – 93 and 2017 – 89
[29] 2014 – 14, 2015 – 11, 2016 – 5 and 2017 – 8

Threat rating of Foreign Predicate Offences

7.21 The foreign predicate criminality threat of ML is Medium/High. This is based on the following:

- As evidenced with Windward Trading the routing of the proceeds of fraud committed overseas through a Jersey structure poses a money laundering threat, particularly using complex structures or where the beneficiary of the Jersey structure is linked to the award of high value contracts in other jurisdictions where corruption is endemic.
- Jersey's financial sectors have been used to conceal the proceeds of foreign criminality. This is evidenced by the use of complex structures, incorporated or administered from in the island, in the cases analysed during this risk assessment. A number of complex structures were found to manage and/or hold assets locally, internationally and sometimes both simultaneously.
- The TCSP and banking sectors are most exposed to this threat, particularly by holding funds that may be the proceeds of crime or administering legal persons and legal arrangements appointed to facilitate international cross jurisdictional ventures.
- In addition to this management of Private Wealth is an important part of Jersey's offering with major institutions headquartering their Private Wealth businesses in the Island. Given the scale of the business, the risks associated with providing services to Private Wealth clients who are PEPs from an international perspective is considered to be significant.
- The threat from international criminality is evident from information held by the authorities. This combined with general analysis and professional judgement indicates that the threat from overseas criminality is significant.

Cross Border Threat Assessment

Overview of methodology

7.22 The international ML threat included an assessment of cross-border threat. The Working Group used two methodologies to determine which countries may be considered to present a threat to Jersey (or vice versa).

Methodology 1: WB Methodology

7.23 The working group assessed jurisdictions using the WB methodology. Thereafter, it applied its own additional methodology and analysis

to best reflect its professional judgement. The methodology for determining jurisdictions to be included in the cross-border threat analysis was enhanced to reflect Jersey's position as an international financial centre.

7.24 There were 3 parts to the methodology:

Part A: Identify jurisdictions which feature when certain criteria is applied

- Identify the jurisdictions which feature in various objective data reports (for example, jurisdictions with financial flows of more than GBP 2m into Jersey); and
- Identify the jurisdictions which feature when additional indicators are applied (for example, jurisdictions that request supervisory cooperation from Jersey).

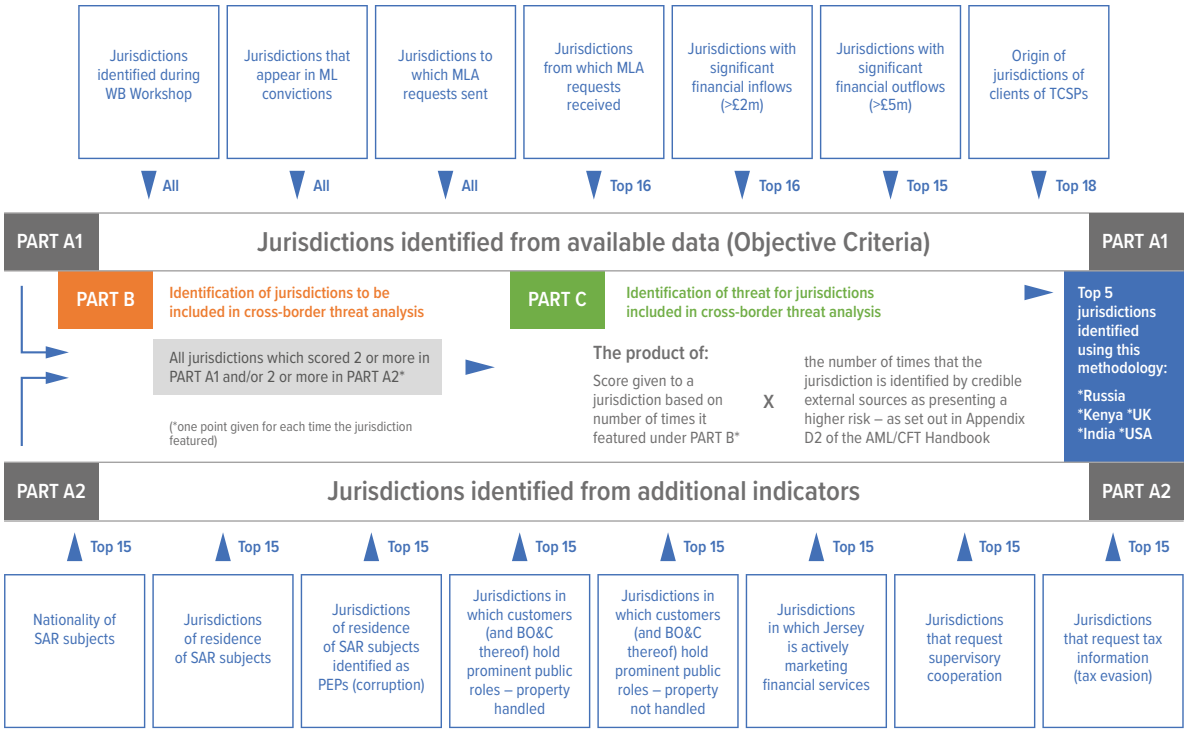
Part B: Determine which jurisdictions to include in the cross-border threat analysis

Rate each jurisdiction based on the number of times it features in Part A1 and Part A2 (jurisdictions which only feature once in Part A1 or Part A2 are disregarded).

Part C: Determine the threat for the jurisdictions included in the threat analysis

Multiply the rating given to each jurisdiction in Part B by the number of times the jurisdiction is identified by credible external sources as presenting a higher risk – as set out in Appendix D2 of the AML/CFT Handbook.

Diagram 7.1



For example:

For Example	A	B	C	D	E
Country	Number of times featured in Part A1 (if ≥2)	Number of times featured in Part A2 (if ≥2)	Total in part A (A+B)	Number of times identified in Appendix D2	Total Score (C x D)
X		5	7	6	42

7.25 Any jurisdiction scoring 4 or more was rated. There were 27 jurisdictions considered for wider research and inclusion in this section.

7.26 The jurisdictions with the top 5 scores were identified as posing a threat to Jersey (or vice versa). See Table 7.1 below.

Methodology 2: Financial Centres[30]

7.27 The Working Group identified additional jurisdictions for further analysis, based upon the fact that they are financial centres. Those centres may act as "entrepots", where funds received or sent, have come from or will subsequently be transferred to other jurisdictions, including Jersey.

7.28 These jurisdictions were reviewed by their most recent NRAs (if available) and MERs. The methodology was to identify within those reports any information indicating high risk jurisdictions connected with those countries and also high-risk products and services within that country that poses a risk for Jersey. It was also considered whether there are strong links between such centres and any jurisdictions which may be considered to present a higher risk for ML purposes.

7.29 6 jurisdictions were identified as posing a threat to Jersey (or vice versa). See Table 7.1 below.

Outcome of Assessment

7.30 The countries which were identified as posing a threat to Jersey (or vice versa) using Methodology 1 and Methodology 2 are set out below:

Table 7.1

Sector	Size/share/importance
India	HKC
Kenya	Ireland
Russia	Switzerland
	UAE
UK	UK
USA	USA

[30] The Bailiwick of Guernsey was also initially considered in the Threat assessment exercise. As Channel Island neighbour to Jersey, the Bailiwick has strong links with Jersey in terms of cross border activity and both jurisdictions represent a potential threat to each other. Both jurisdictions also have similar relationships with the UK. Data recorded indicates that there are 57 Jersey subsidiaries operating in Guernsey, 36 subsidiaries are regulated and there are 35 branches. Therefore, Guernsey was considered in the Threat assessment but was not ultimately included in the final threat list.

Jersey's Links with Financial Centres identified using Methodology 2

Ireland

7.33 Ireland's close economic ties with the United Kingdom and its shared border mean that it could be at risk of certain cross-border money-laundering activities. Given the potential impact of the UK leaving the EU, Ireland will most certainly require enhanced agreements with the UK and the EU, particularly with regard to the border. Ireland is the 4th largest exporter of Financial Services in the EU. The financial sector brings significant numbers of international financial services companies to Ireland, creating substantial levels of employment and generating significant tax revenue for the State.

7.34 While Ireland is considered a relatively low crime country, proceeds-generating criminal conduct, common to all developed economies, is present. Predicate offences are perpetrated by offenders of various levels of sophistication, from small scale criminals, through criminalised professionals to organised crime gangs (OCGs). It is estimated that there are approximately 40 OCGs in Ireland, of which at least 9 have international links with OCGs in regions such as the Netherlands, Spain, West Africa and the United Kingdom. The financial services sector as a whole is vulnerable to ML/TF threats arising from a range of predicate offences including drug trafficking, financial crime, fuel smuggling, prostitution, tax evasion, bribery and corruption.

7.35 The risk of being targeted by criminals to launder the proceeds of crime is significant due to a range of factors, including: the wide range of products and services offered in the sector; the nature of the products and services offered; the broad demographic of the customer base; the wide geographic reach of the financial sector; the scale and materiality of the financial sector in Ireland; the use of complex corporate vehicles.

7.36 The business links between Jersey and Ireland are predominantly in respect of corporate fund structures (such as LLCs, hedge funds and retail funds), where fund administration services are outsourced from Jersey to Ireland and vice versa.

HKC

7.37 HKC is a major financial centre and a major jurisdiction for company incorporation. While HKC has a low domestic crime rate the recent FATF MER of HKC identified it faces a significant risk of attracting those who seek to launder the proceeds of crimes such as corruption and tax evasion.

7.38 The MER found that given HKC's position as an international financial centre, and the risks it faces from crimes committed abroad, it is not making sufficient outgoing requests for cooperation. Authorities could focus more on prosecuting the laundering of proceeds from foreign offences. The issue of co-operation is significant for Jersey as complex structures involving HKC entities can be linked to Jersey.

7.39 Complex structures which are linked between HKC and Jersey are relevant to the ML risk in Jersey. There are also a number of international banks, TCSPs and law firms who have presence in both HKC and Jersey.

Switzerland

7.40 Main threats for the Swiss financial sector in terms of predicate offences are fraud, including online fraud, bribery committed abroad, and support for and participation in a criminal organisation. Financial intermediaries most exposed to money laundering risks are banks (especially universal banks and private banks), independent asset managers, fiduciaries, lawyers and notaries, and money transmitters. Switzerland determined that there are ML risks associated with the use of offshore structures in the context of creating companies for use in the layering process.

7.41 Swiss wealth management is 26% of global offshore wealth management and has the largest amount of assets under management. The banking sector is high risk in terms of opening accounts and managing assets on behalf of legal structures such as foundations, domiciliary companies and trusts domiciled in offshore centres. Not all fiduciaries operating through branches or through partnerships with foreign intermediaries, when setting up offshore entities have a proper appreciation of their responsibility linked to the creation of corporate structures.

7.42 Trust and subsequent banking arrangements are common links between Switzerland and Jersey. Switzerland looks to use the common law structure of the Jersey law trust to provide a greater variety of wealth management facilities being run out of Switzerland. The presence of a number of Swiss regulated entities in Jersey.

UAE

7.43 The UAE is a country with a significant wire transfer flow both to and from Jersey. It is assessed as medium risk with an increasing trend. UAE is a varied area consisting of an estimated 30 commercial free trade zones and the Dubai IFC (DIFC), with numerous divergent approaches to AML/CFT enforcement across sectors and emirates which creates an uneven regime which can be abused for ML.

7.44 The recent FATF MER of the UAE indicates that the DIFC and the ADGM (the two Financial Free Zones in the UAE) have higher standards of financial regulation, compared to the other domestic and free trade areas. Relevant reports indicate that there is cause for concern and room for improvement in several areas. There is a growing number of trade free zones where creation of offshore companies is possible but in Dubai these structures are not permitted. The risk of front companies existing in the UAE and being used by nationals on behalf of foreign interests is significant. Trusts are only permitted in DIFC and these are regulated, therefore legal arrangements generally present a lower risk. ML vulnerabilities exist particularly due to heavy use of cash in economy which MVTS providers are particularly exposed to, however significant risks also exist within DNFBP's, CDD obligations, securities and insurance within the free commercial areas.

7.45 Trust and subsequent banking arrangements are the common structures used between Jersey and the UAE. This has been a particular growth area over the past 10 years with significant links being built with the UAE.

UK

7.46 The UK faces significant ML risks from overseas, in particular, from other financial centres (including some of its Overseas Territories and Crown Dependencies), due to its position as a major global financial centre and the world's largest centre for cross-border banking. In particular, the UK is vulnerable and at risk of being used as a destination or transit location for criminal proceeds. Criminal activity in the UK also generates a significant amount of proceeds although domestic crime levels have continued to decrease over the past 20 years.

7.47 The main ML risks identified in the UK NRA include high-end ML, cash-based ML, and the laundering of proceeds from fraud and tax offences, drug offending and human trafficking, and organised crime. The UK also faces particular and significant risks from laundering the proceeds of foreign predicate crimes, including transnational organised crime and overseas corruption. The NRA identifies the highest risks as those from cash-based ML and high-end ML (meaning the laundering of large amounts of criminal funds through the UK by, for example, transferring those funds through complex corporate vehicles and offshore jurisdictions).

7.48 Jersey has strong financial links with London and tends to focus on markets that are being developed within the City of London. Financial flows both incoming and outgoing are indicative of that relationship with the UK which are top of the listing in both areas. This is an indicator that foreign investment may not be coming to Jersey directly from the source countries but being placed in UK financial institutions and the asset flow is then to Jersey.

USA

7.49 According to the MER of the USA, inadequate access to beneficial ownership information is a fundamental gap in the US regime. The MER notes that the NMLRA identifies examples of legal persons being abused for ML, in particular, through the use of complex structures to hide ownership. While authorities provided examples of successful investigations in such cases, the general lack of access to beneficial ownership information was a concern. Among the discussion in the NMLRA on legal persons and legal arrangements there are a few references to legal persons (including shell companies) in an offshore context. Criminal actors are noted as having established complex networks of front and/or shell companies in jurisdictions spread throughout the world, often in places with active offshore financial centres or areas with lax corporate registration controls. Such front/shell companies in turn establish bank accounts which give them access to the global banking system through normal correspondent banking ties, this being the primary entry method into the US financial system.

7.50 Jersey is not specifically mentioned in the NRAs, however, Jersey is noted in the MER as having shared forfeited assets with the US and supports the effective international partnership that Jersey has with theUSA.

7.51 In the TCSP sector there is involvement in the administration of structures with nexus to the USA. This is considered to be a potential growth prospect in the area of Funds.

International Co-Operation Surveys

7.52 As referred to in the introduction, international co-operation surveys were sent out to jurisdictions that Jersey had liaised with, through either the FIU, LOD of JFSC to obtain feedback. The jurisdictions were chosen based on the fact they were common jurisdictions of liaison for the Jersey authorities. The feedback document was based upon a template more commonly used by the FATF and FATF-Style Regional Bodies ahead of mutual evaluations. This had two aims:

- Assess the extent to which Jersey actively and effectively renders and requests international cooperation in relation to ML/TF, associated predicate offences, related financial crime investigations and prosecutions and asset forfeiture.
- Take account of information provided on general or specific ML/TF risks present in Jersey - observed from outside the jurisdiction.

7.53 The FIU sent out surveys to other foreign authorities who they have regular interaction with. . The feedback was positive in terms of the quality of information shared and how this was then converted to domestic referrals in their jurisdictions. The threats observed from their jurisdictions were related to tax crimes, with Jersey facilitating structures and a competitive banking system attractive to investors, in order to avoid tax liabilities in their jurisdictions. Also, the use of Trust structures, again to disguise the beneficial owners through the use of companies and disguising of assets which could include the proceeds of crime.

7.54 The LOD sent out surveys to other foreign authorities who they have regular interaction with, all indicating positive experiences with the handling of MLA's. MLA's.

7.55 During 2019, the JFSC collaborated with 29 jurisdictions (with the vast majority of interactions being with the UK); received over 600 regulatory requests for assistance and made nearly 300 requests from other jurisdictions[31].

Country links to Jersey through customer relationships

7.56 The Government of Jersey initially published a strategy for developing relationships with global markets in 2017. The strategy was updated in 2019, and now includes a broader matrix of indices used to evaluate countries with which to pursue engagement in order to position Jersey as a more influential partner internationally, with maturing commercial and political relationships. These indices include data from the JSFC on higher risk countries and the Basel Anti-Money Laundering Index. The updated strategy was not considered in NRA analysis due to timing of publication being after the main analysis period.

The 2017 strategy focussed on countries in Asia, the Middle East, sub-Saharan Africa and North America. A number of those jurisdictions were considered to present a higher risk for ML & TF by the JFSC. Appendix D2 of the Handbook lists a number of countries and territories that are identified by reliable and independent external sources as presenting a higher risk. In assessing country risk for AML/CFT purposes, in addition to considering the particular features of a customer, it will be relevant to take account of the number of occasions that a particular country or territory is listed for different reasons. Where a country or territory is identified as presenting a higher risk for different reasons by three

[31] https://www.jerseyfsc.org/industry/financial-crime/collaboration-with-other-supervisory-authorities/

or more, or four or more, separate external sources, it is more prominently highlighted in the appendix.

7.57 Understanding the destination of funds transfers and the jurisdictions from which funds are received (funds flow data) is a recognised key indicator of the risk of money laundering and terrorist financing being present in a jurisdiction. Where a jurisdiction has a Central Bank, funds flow data is captured and monitored as a matter of course, but Jersey has no Central Bank.

7.58 In late 2017/early 2018 the Government worked with a small number of Jersey deposit-takers to investigate how funds flow data could be captured and considered. This work highlighted that it was possible for deposit-takers to provide aggregated data regarding the destination and origination of funds. Whilst the deposit-takers use a number of systems to move funds SWIFT is the most common and the system of most interest as it is multicurrency/multi-jurisdictional.

7.59 The 2016 and 2017 data was voluntarily supplied by 75% of the UK clearing banks and a number of the largest deposit-takers operating on the Island therefore it is anticipated that the voluntary data may cover a large percentage of the number and value of funds flows.

Physical Movement of Cash

7.60 Although it is not possible to identify how much currency is incoming and outgoing, there is some data available from JCIS for cash seized and forfeited under court orders from people leaving the Island. There is also information available identifying the cash being declared by individuals leaving the Island. Table 7.2 indicates that in total GBP 1,090,022.00 outgoing flow was declared but not seized. Table 7.3 indicates that in total USD 20,519.00 outgoing flow was declared but not seized and Table 7.4 indicates that in total EUR 123,410.00 outgoing flow was declared but not seized.

Table 7.2

Top ten jurisdictions cash declared not seized in GBP	
Spain	273,500.00
United Kingdom	235,477.00
Island of Madeira36, Portugal	148,200.00
Poland	142,960.00
Romania	59,500.00
USA	59,093.00
Thailand	27,270.00
Czech Republic	21,700.00
Switzerland	20,500.00
China	15,000.00

Table 7.3

Top six countries cash declared not seized in USD	
Argentina	11,000.00
Zimbabwe	3,600.00
Canada	3,200.00
Russian Federation	2,000.00
United Kingdom	619.00
Nicaragua	100.00

Table 7.4

Top ten countries cash declared not seized in EUR	
France	41,120.00
Spain	37,050.00
Island of Madeira, Portugal	28,995.00
Germany	9,000.00
Italy	5,000.00
Greece	3,855.00
United Kingdom	3,840.00
Netherlands	1,800.00
Poland	1,500.00
Mainland Portugal	250.00

7.61 None of the cash in Tables 8.2-8.4 was considered by JCIS officers to be 'tainted' and therefore was not seized, this assessment was made following discussions with the passengers at the port of departure. The funds being taken to Madeira and Poland were identified as being the earnings of transient workers. This is in line with the population of migrant workers that take up employment in the Island on short term contracts, such as in the farming industry and then returning to their national homes after the working season has concluded. JCIS have had success in preventing the export of the proceeds of crime leaving Jersey to the UK; for example, in 2016 there were two cases convicted: AG v Turney where GBP 42,000 was seized and AG v Brennan where GBP 11,660 was seized. In a further case in 2017 (AG v Dixie and Pereira) JCIS seized GBP 36,420. All the above cash was discovered concealed within vehicles returning to the UK by the way of commercial sea travel

7.62 It is likely that a proportion of the proceeds of crime seized 'inland' by SoJP and JCIS are destined to be exported. These are largely dealt with by the way of Confiscation by the higher Court at conviction and are included within the Confiscation figures not the cross border cash seizure statistics, for example: AG v Whelan GBP 40,020, AG v Spinola, Rae & Palmer GBP 65,155, GBP 8,000 and GBP 54,020 in 2016, Ag v Hole GBP 115,000 in 2017. Further data collected via the Treasury indicates that Jersey currency in the region of GBP 20m was repatriated to the Island between 2013 and 2018. Jersey bank notes cannot be used in the UK as they are not legal tender. These notes are collected and returned to the Treasury. There is no reliable information available to ascertain where in the UK the notes are exchanged, or any supporting information that could indicate the quantities that are being exchanged at any one place. It can

be assumed that some transactions occur at bureaux de changes in the airports and in major cities visited by tourists.

Threat Rating of Cross-Border Threat

7.63 Cross-Border threat of ML has been assessed as Medium. This is based on the following:

- Physical cross border movement of cash poses a threat of ML. Declarations at the Ports of Jersey are on an "if asked to declare" basis. The result of this is that passengers can transport the proceeds of crime through the borders without having made statutory declarations, unless stopped by border enforcement staff. Evidence of multi million pounds of Jersey currency being repatriated back to the island, over a 5-year period is indicative that this activity is occurring without law enforcement detection.

- Predicate offending is evidenced occurring in international jurisdictions as highlighted in the previous chapter. The flow of tainted assets is being placed and layered in local institutions often corporate structures which aid to assist the disguise of their origins. This is evident particularly in the bribery and corruption cases highlighted.

- Drugs trafficking is a common crime associated with cross border threat, not only is the flow of the commodity between jurisdictions a threat to the health of the population, but the financial transactional activity of the traffickers. Financial sectors commonly associated with tainted cash flow are the banking and MSB sectors.

- As highlighted in the list of identified countries that pose a cross border threat, examples of high end UK property owned by local corporate structures demonstrates the threat of tainted assets being placed in this jurisdiction to disguise their origin and then invested in luxury property under company structures.

- The absence of transactional reporting of a pre-determined set threshold, allows the flow of assets across borders, relying only on the suspicious element of this transaction to be identified often after the transaction has occurred. This is a threat in terms of the receipt of assets being placed in the jurisdiction and also the transmission of those assets to other jurisdictions as identified in other countries NRA's such as Guernsey's.

Domestic Predicate offences

Overview

7.64 Predicate offences recorded during this period, using the FATF designated categories of offences list[32] as a reference and including other relevant domestic offences, are:

- drugs trafficking
- larceny (theft)
- breaking and entry/illegal entry
- receiving stolen property
- fraud & false pretence
- kidnap and extortion

- robbery
- bribery and corruption
- offences under:
• Article 7(1) – Financial Services (Jersey) Law 1998
• Article 28(2) - Financial Services (Jersey) Law
• Article 53(1)(a) Terrorism (Jersey) Law
- Tax offences.

7.65 The crime rate in Jersey is currently low, it has been steadily decreasing since 2008 when the number of recorded crimes for that year was 4,806[33], apart from 2017 where there is a slight increase in reported crimes figures:

7.66 Crimes recorded between 2013 – 2017

Table 7.5

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
No.	4,806	4,539	4,564	3,985	3,833	3,201	3,141	3,087	2,902	3,033

7.67 The number of cases of money laundering investigated has been low throughout this period. The reasons for this are considered in the chapter on national ML vulnerability.

7.68 The outcome of the data analysis of the most prevalent domestic offences indicates that drugs trafficking cases had most prosecutions and convictions for ML, followed by fraud offences and larceny.

7.69 No prosecutions have been undertaken against institutions regulated by the JFSC during this period although significant regulatory sanctions have been imposed against institutions and individuals for failing to comply with the AML requirements.

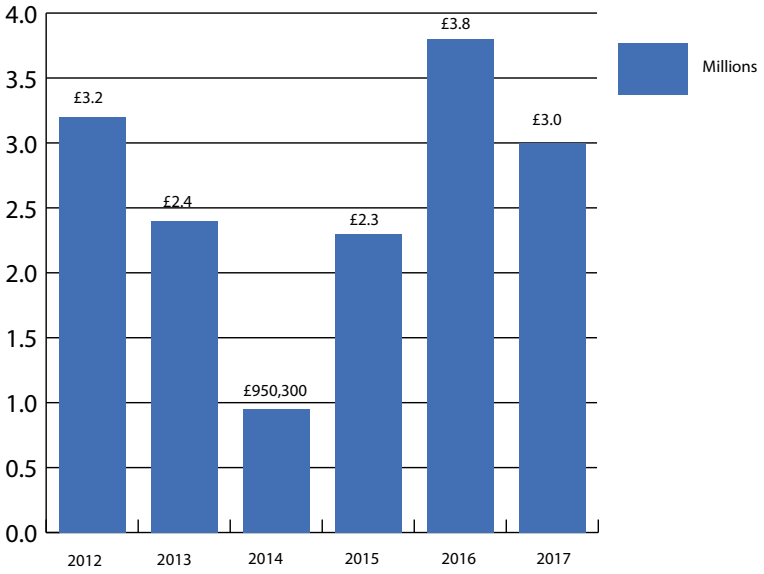
7.70 Virtual offices are not permitted in Jersey and any person providing registered offices by way of business are required to submit to the full regulatory regime. A recent trawl of the company registry data identified a significant number of private addresses linked to the administration of companies potentially in breach of the regulatory regime. The JFSC commenced a review of such activity in 2019 and visited premises where suspected regulated activity was being undertaken.

Drugs Trafficking

7.71 JCIS and SOJP both produce public annual reports containing annual figures comparing drugs trafficking seizures year on year and any trends that have been identified[34]. In the chart below JCIS have provided statistics showing the overall value of drugs seized during 2012 – 2017.

[32] http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html
[33] Jersey adopted UK Home Office counting rules in 2001, see www.jersey.police.uk annual reports for details

Diagram 7.2 - JCIS annual report 2017



7.72 The profile of drugs trafficking has changed since 2013. The more "traditional" drugs such as Class A MDMA, cocaine and heroin and Class B drugs such as herbal cannabis and cannabis resin remain the focus of many drugs trafficking cases. However, in 2014 increased seizures of New Psychoactive Substances (NPS), or "legal highs" as they became better known, was observed. In 2014, SOJP and JCIS seized almost 3 kilograms of NPS in a two-week period which resulted in several prosecutions and convictions.[35] At the time 3 kilograms was a significant haul (applying 2019 estimated street values, NPS is valued at GBP 40 – GBP 80 per gram). JCIS data shows that drugs are predominantly imported to Jersey through its sea borders. Importation of drugs through the postal system as a drugs trafficking method is not uncommon in Jersey, although less material. Importation through Jersey's air borders is much less significant.

7.73 2014 also saw a sharp increase in the levels of drug-related crime, through higher detection rates as a result of intelligence led operations and the considerable work that was done to raise the awareness and understanding of the dangers of so called 'legal highs'. 2015 saw a 14% reduction in the detection of drug-related crime. The longer-term trend also suggests that the Island saw a 20% reduction in drugs related offences over the past five years. The level of drugs seizures can be a reflection of Police and JCIS activities, rather than an indication of the overall level of illegal drugs activity in the Island. In 2016 specifically drugs crimes increased and an additional 88 crimes were recorded compared to 2015. The number of seizures of NPS reduced significantly in 2016.This reduction can be attributed to the multi-agency approach regarding the dangers of taking these substances involving not only law enforcement, but also Health and Social Services, Education and the "Prison? Me? No Way!" programme, together with the introduction of the Psychoactive Substances Act in the UK in May 2016.

7.74 The proceeds that are generated from the supply of drugs in Jersey is considered substantial: figures obtained from the LOD indicate that during 2013 – 2017 approximately GBP 5.3m, USD 350,000 and EUR 110,000 was confiscated from criminals. Undetected proceeds generated from this type of offence are deemed to be higher than those detected. There are of course challenges of policing borders and not every person and every vehicle fromevery vessel or

[34] https://www.gov.je/government/departments/justicehomeaffairs/departments/customsimmigration/Pages/index.aspx
[35] https://jersey.police.uk/news-appeals/2014/april/nps%E2%80%99-seized/

plane can be searched. So, there is a risk that drugs are being missed and being sold in Jersey. This is evident when suspects are arrested for crimes and they are under the influence of drugs. The threat assessment attributed to this offence is therefore Medium/High.

Fraud offences

7.75 All recorded fraud offences during the data collection period relate to common law[36] fraud, fraudulent conversion and cases involving false pretence. Investigations extended across multiple jurisdictions, making them both complex and time consuming; equally some investigations were also led by the AG due to their seriousness and the requirement to use specific powers of the AG during the investigation process.

7.76 Fraud offences within the jurisdiction assessed during this period indicate that criminals are committing crimes against individuals - some who are vulnerable - by using their positions of trust in order to make false representations for personal gain. The group's assessment of undetected proceeds generated from this type of offence is deemed to be higher than is being detected.

7.77 Fraudsters can and often work alone to avoid detection and build up significant trust with their victims. However, there are historic local examples of fraudulent inducement to invest and lend money by 4 individuals conspiring together, one of the defendants was a sitting Magistrate at the time.

7.78 The threat of fraud is ever increasing especially with cyber-enabled fraud. Local reports of online fraud to the States of Jersey Police have recently increased significantly from 127 in 2017 to 212 in 2018. Not all resulted in loss of money to the complainant with many people contacting the Police describing the potential for loss in order to alert others. However, the total number of Islanders reporting that they have lost money and the amounts stolen has risen sharply from 21 in 2017 to 31 in 2018 with corresponding total losses of GBP 300,697 and GBP 999,888 respectively. Social engineering continues to be the main driver behind such fraud with criminals tricking Islanders into parting with their personal and/or financial details by pretending to be from a trusted organisation such as a bank, the police or a utility company.

Larceny (Theft)

7.79 Larceny offence cases recorded during this assessment period that were detected or investigated is 2,664 with 405 persons being convicted of the predicate offence only. There is one recorded ML offence relating to the laundering of the proceeds of larceny.

7.80 Larceny is a common law offence and there are several permutations of this offence such as larceny servant (theft from your employer)

7.81 Larceny is one of the higher reported crimes for this assessment period - most reported crimes relate to simple larceny. The threat of larceny on a local level is often opportunistic and related to simple crime, there are very few cases of planned and complex larcenies and where this does occur it is often part of a bigger crime such as a complex fraud. There is no evidence of sophisticated conspiracy to steal offences recorded.

[36] Common law refers to case law (i.e. judges' decisions) in England and Wales and other common law jurisdictions. Jersey is a mixed jurisdiction and its principal sources of law are legislation, customary law and case law.

7.82 Only one offence of ML connected to the predicate of larceny has been recorded; however, there are often cross overs of common law offences, in that cases can involve offences of fraud and larceny as part of the criminality. Whilst a high volume of larceny crimes is recorded, there is no data that indicates that the proceeds of these crimes are being laundered in any sophisticated manner. There will be self-laundering that is occurring in these simpler crimes, but this is not being detected on a regular basis and there are no statistics to support this. This could be because it is not being investigated and therefore not being detected. The undetected proceeds generated from this type of offence are deemed to be higher than is being detected, as a result of lack of data and/or investigations. The assessment of threat in relation to larceny offences is deemed to be Low.

Other predicate offences with no ML investigation

Breaking and entry/ Illegal entry (Burglary)	This predicate offence is also a common law offence; 620 cases were detected or investigated within this time frame and 93 persons were convicted for the predicate only offence. There is one recorded ML investigation that took place in 2016.	Medium/low.
Receiving stolen property	There were 35 cases of detected or investigated crime in this area during the assessment period; in total 19 people were convicted. This predicate offence is a common law offence. However, there are no recorded ML cases that were prosecuted or convicted during this period.	Low
Kidnap and extortion	This predicate offence is a very rare occurrence in the jurisdiction and during the assessment period there are only two cases that were detected or investigated of extortion. Of those cases one person was convicted, but there have been no recorded ML convictions during this period.	Low
Robbery	Robbery is a common law offence and acts of violence on innocent members of the public are rare. During the assessment period there were 24 cases of robbery which were detected or investigated, and 7 persons were convicted. There are no recorded ML cases in relation to robbery.	Low
Bribery and corruption	There have been 7 recorded cases of domestic bribery and corruption that were detected or investigated as a predicate offence.	Low
Terrorism	During the assessment period there has been one case detected or investigated under Article 53(1)(a) of the Terrorism (Jersey) Law 2002. This case was also prosecuted, and one person was convicted in 2015.	Low
Criminality involving vulnerable people, such as children and vulnerable adults	This has been a focus of SOJP in recent years. Whilst offences towards this section of the community is not generally linked to financial gain, the risk of threat and harm is significant. Offences against children such as possession of indecent images of children covered by legislation such as the Children's Law (Jersey) 2002, saw 27 convictions during the assessment period.	Not rated. Included to reflect other crimes that are not necessarily ML linked, but could be if committed cross border in this example.
Human trafficking and modern-day slavery	This has not been detected within the jurisdiction and there have been no convictions. There is no evidence of human trafficking and exploitation of low paid workers for financial reward. This is different to the profile seen in the UK where most Police forces now have modern slavery units, set up to tackle the increased detection of this type of crime. In the UK, multi occupancy premises, once identified, have been found to be inhumane to live in and residents have little or no money, as their bank accounts are controlled by the Organised Crime Groups exploiting them.	Not Rated. Included here to reflect emerging crimes in other jurisdictions and the current Jersey profile.

Prostitution	There are no recorded convictions for prostitution in the jurisdiction, there is no red-light district and soliciting at the roadside is not common practice.	Not Rated. Included here to reflect emerging crimes in other jurisdictions and the current Jersey profile.
Revenue Jersey	The investigation of tax offences has in recent years been dealt with mainly by civil settlement and levying of penalties. Tax evasion has been investigated by the Police only as part of investigations of wider criminality, e.g. Goodwin & Jones. There have been only limited opportunities to prosecute ML offences linked to domestic predicate tax crimes. Revenue Jersey prosecuted 10 cases for fraudulent completion of income tax returns between 1992 and 2010.	Medium/Low

Organised Crime Groups (OCGs)

7.83 Organised criminality poses a serious threat to the health, wellbeing and national security of Jersey whilst simultaneously eroding the unique economic environment. Criminals are becoming more capable and resilient, persistently targeting Jersey because of its unique financial infrastructure and very profitable drug commodity market. The response to this threat needs to be measured and consistent, allowing an ability to identify, index, and assess organised criminality and the threat individual members of groups may pose.

7.84 Organised criminality within the financial sector poses a risk to the Island, any group pursuing financial criminality that meets the definition can be mapped and researched further. A key distinction here is that the group must be operating, at least mostly, in Jersey and the operations of the group pose risk to Jersey. This distinction is important because the JFCU may deal with organised criminality stemming from around the world but where Jersey is being used as a conduit to move funds etc. This type of group is not necessarily mapped under this type of local OCG mapping and will likely be captured under international investigations.

7.85 The types of organised criminality identified by the JFCU would broadly fall into one of two areas:

a. Organised financial criminality secondary to a primary crime type (e.g. money laundering by an OCG involved in drug supply)

b. Organised financial criminality being the primary crime (e.g. professional money laundering, possibly servicing multiple OCGs or individuals- professional facilitators)

7.86 Drugs trafficking offences have the strongest connection to OCGs and importation of drugs occurs by sea and air from mainland UK and Europe. This includes links to cross border criminality with couriers often being recruited by OCGs to participate in the importation. The couriers are mostly indebted in some way to the OCG financially or as a vulnerable user of drugs receiving gifts of the product as payment, although OCG members have personally couriered in recent times.

7.87 In June 2019, Operation Lion saw the arrest of OCG members in both the UK and Jersey as part of a long-term operation with the UK National Crime Agency, UK Border Force and the Australian Authorities. An array of Class A and B drugs

destined for Jersey were seized valued at GBP 919,000. That specific case is now in the judicial system with the first seven members of the OCG being sentenced in September 2020. The threat assessment in relation to OCG activity locally is medium/high with links to cross border activity covered in a further section of this report - this is predominantly linked to the predicate offence of drugs trafficking.

Threat rating of Domestic Criminality

7.88 Domestic threat of ML has been assessed as Medium/Low. This is based on the following:

- The conclusions reached in relation to domestic criminality is that reported crime is low and in general the public perception of crimes committed in Jersey is that the jurisdiction is a low crime area and a safe place to live. Drugs offences, Larceny, Fraud and Corruption are the only offences that have any ML investigations linked to the predicate. The low recorded ML investigations attached to predicate crime is a strong indicator that ML offences have not been fully exploited historically and opportunities have been missed in this area.
- A hypothesis is that this is down to a lack of understanding of ML related offences and a lack of experience in investigating ML across LEA. Having a two-trial judiciary process for predicate and ML indictments, has inevitably also led prosecutors to the preferred one trial approach of the predicate offence only, historically. Domestic crime in general is largely reactive in response to reported crime to LEA's. Drugs trafficking is the most proactively investigated crime which is often intelligence led and can involve multiagency partnership across LEA's. The threat of ML remains whilst acquisitive crime continues to be committed, there needs to be better training and understanding of ML across LEA's even at low level crime and it should always be a consideration in every serious local asset generating offence.
- The manner in which local residents have decided to secure investment advice and the type of investments they are seeking to invest in has increased the threat of fraud against local residents. Usually the offender is very well known to the victim and in a position of trust. Low bank interest rate has
- The Jersey Fraud Prevention Forum undertook a risk assessment in relation to local residents and the risks of fraud. The move towards online shopping and payment online by credit card presents serious challenges for law enforcement and significant opportunities for the more technically advanced criminals. Given the increase in postal packages being handled coming into the Island the threat posed by online fraud is considered significant. The individual transaction amounts are generally modest and may explain why many incidents of online fraud go unreported. The increase in online fraud globally poses an AML threat with the proceeds needing to be pooled and laundered via companies posing as legitimate businesses.
- Whilst acquisitive crime continues within this jurisdiction there remains a risk of the laundering of the illicit gains in order to disguise their origin. Acknowledging that there is a lack of data supporting ML investigations, it is concluded that ML is likely but at a low level. In relation to drugs trafficking offences there is an obvious threat of laundering which is cross border and involves OCG's on a national and international scale. Where the origin is unknown of the predicate offences because of the

  international nature of drug trafficking this is deemed Medium/Low.

Overall ML threat assessment and conclusion

ML Threat:	Foreign Predicate Offences	Cross-Border	Domestic	Overall
Rating	Medium-High	Medium	Medium-Low	Medium-High

7.89 When determining the overall rating, it was deemed appropriate to apply a heavier weighting to the foreign predicate offences threat rating. The foreign predicate offences posed a much higher threat to Jersey as they were considerably more significant in respect of the type, value and level of the criminality.

7.90 The following factors were also considered when assessing the Overall ML Threat:

- the comparison of data collated via various stated sources
- evidence and intelligence of crimes committed within the jurisdiction, outside of the jurisdiction and where the origin is unknown, it compares domestic threat to international threat
- the absence/gaps in data which is ultimately a vulnerability
- professional judgement that was determined via various sources cited in this report and other available material as well as through working group discussions.

SECTION 8

National Money-Laundering Vulnerabilities

Module 1: Quality of AML policy and strategy

Assessment: 0.4 Medium Low

8.1 Jersey's Government is strongly committed to fighting money laundering and the financing of terrorism. The Policy Framework for the Jersey Financial Services Industry (2014) includes complying with international standards and initiatives of global application, as a key objective (although there is no specific reference to financial crime). More recently, the Proposed Common Strategic Policy (2018 -2022) explains the importance of protecting Jersey's reputation. This requires the Island to demonstrate that it meets international standards (although, again, there is no reference to financial crime). The Government Plan 2020-2023[37] for Jersey forms an important part of the strategic framework for the Island and brings to life the priorities set out in the Common Strategic Policy. That document specifically notes the importance of underpinning capability in international tax policy, financial crime policy, financial services supervision and enforcement.

8.2 Historically, AML/CFT policy has been developed around: (i) FATF Recommendations; (ii) EU implementation of those Recommendations; and (iii) standards set by the (GIFCS – with respect to TCSPs. Use of control of borrowing legislation also means that Jersey is in a strong position regarding transparency of legal persons. Jersey's active participation in bodies that promote good practice relating to international standards (as examples: MONEYVAL; Egmont Group; and CARIN) also assists in policy development.

8.3 Jersey's track record has been proactive in identifying and addressing vulnerabilities. For example, TCSPs have been subject to requirements set out in the MLJO since 1999, and a mechanism to oversee compliance with those obligations has been in place since 2002. Both of these initiatives were ahead of most other jurisdictions.

8.4 More recently, responsibility for financial crime policy has been assigned to the Minister for External Relations. Government runs its co-ordination of financial crime policy through the JFCSG. The JFCSG deals with evolving policy and provides advice to the Minister.

8.5 The JFCSG has been established for approximately five years and similar coordinating arrangements have been in place for longer (through the former AML/CFT Strategy Group). Advice and recommendations are to be provided to Ministers as necessary and reporting on progress is undertaken either directly to the Council of Ministers or to the Financial Services and External Relations Advisory Group (FERAG), a ministerial group.

[37] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Government%20Plan%20 2020-23%20VB.pdf

8.6 The JFCSG has published a statement of priorities for 2017 - 2019. However, it is currently considered that there is (i) insufficient AML/CFT resource within the Chief Executive's Office; and (ii) insufficient direction, oversight and coordination of AML/CFT policy and strategy by the Chief Executive's Office, to ensure that the JFCSG delivers its statement of priorities. In particular, programmes have not been in place to: (i) periodically monitor progress in implementing recommendations made in MONEYVAL's 2016 mutual evaluation report (MER) on Jersey; and (ii) consider findings and recommendations included in other MONEYVAL MERs, such as that of the Isle of Man, MONEYVAL's first assessment of an international financial centre.

8.7 The JFCSG has also not developed an overarching policy or strategy on tackling financial crime which sets out what is expected of all the relevant departments and agencies. In particular: (i) there is no clear expression of policies to be followed investigating and prosecuting financial crime (LOD) or supervision of compliance with AML/CFT requirements (JFSC); and (ii) there has been only limited communication with the Global Markets Strategy Group which is charged with developing Jersey's links with other jurisdictions.

8.8 In practice, the JFCSG has not played a proactive role in discussing how AML/CFT resources are to be applied. A recent review of JFCU and LOD resources was triggered by discussion outside the JFCSG and the effectiveness of overall financial crime enforcement monitored by a standing government-led working group (Financial Crime Enforcement - Government Oversight Group) (FCE-GOG) in line with a MoU on financial crime.

8.9 Policy and strategy set by the JFCSG tends to focus on compliance with the FATF Recommendations (including addressing recommendations made in reviews of compliance with those Recommendations). The JFCSG does not currently benefit from access to data which would enable it to develop policy and strategy more generally. In particular, there is no mechanism for collecting and analysing comprehensive statistics from members on matters relevant to the effectiveness and efficiency of AML/CFT systems. For reasons such as these the JFCSG is considered reactive in its approach with changes to AML/CFT strategy being instigated by other fora.

Module 2: Effectiveness of ML Crime definition

Assessment: 0.9 – Close to Excellent

8.10 In Jersey's fourth round mutual evaluation, Moneyval assessed Jersey as being "Largely Compliant" with Recommendation 1 of the 2003 FATF Recommendations (now superseded by Recommendation 3 of the FATF 2012 Recommendations).

8.11 A minor technical shortcoming was identified regarding the definition of criminal property and concerns were raised, regarding effectiveness, over the number of money laundering prosecutions and the difficulties in trying a statutory offence of money laundering together with a customary law offence (examples of the latter being fraud and perverting course of justice).

8.12 Measures have been taken to amend the definition of criminal property, which now includes property that:

(a) constitutes/represents the proceeds of "criminal conduct" whether in whole/part and whether indirectly/directly; and

(b) is known or suspected by the alleged offender to constitute/represent such proceeds.

8.13 In terms of the effectiveness concerns expressed by the MONEYVAL assessment team, the Jersey authorities, in practice, have not encountered any difficulties with the current definition of the ML offence.

8.14 The average penalty was 22 months imprisonment, the highest custodial sentences imposed against persons were six years, four years and three-and-a-half years. Very few fines were imposed in these cases since for natural persons imprisonment is considered a more dissuasive penalty. However significant confiscation orders were otherwise imposed. Windward Trading Ltd is an example, where a legal person was prosecuted for money laundering and confiscation orders were made in that case for GBP 3,281,897.40 and USD 540,330.69. It is considered that sanctions which have been applied are effective, proportionate and dissuasive. In some cases the ML has been standalone and the added value of ML protected because the penalty has not been merely concurrent to the sentence for the predicate.

8.15 There are not strict sentencing guidelines in Jersey which one might see in larger jurisdictions to avoid discrepancies across judges. The Crown and the Court do follow precedents (Jersey and elsewhere) when judging the appropriate starting point for a sentence (before then considering mitigation/aggravation).

8.16 Statutory and customary offences previously could not be tried together because of the differing modes of trial. The procedure regarding mixed indictments has been revised. Since July 2019, in those circumstances where a person is being tried at the same time with both customary and statutory offences the mode of trial shall be determined by the Court which shall have regard to the nature and gravity of the offences and submissions from defence and prosecution counsel.

Statistics

8.17 Between 2013 and 2020, there were 47 persons (legal or natural) convicted of money laundering in Jersey. There are examples of natural persons having been convicted of ML following guilty pleas without the underlying predicate offence being proven. Jersey is yet to see an ML conviction after trial on the basis of irresistible inferences. The majority of these convictions were for self-laundering or were third party money laundering convictions. Most cases concerned the importation of, or dealing in, drugs.

Module 3: Comprehensiveness of Asset Forfeiture Laws

Assessment 0.7 – High

8.18 Jersey has a comprehensive range of statutory provisions which provide for the seizure and confiscation of the proceeds of crime, instrumentalities and property of a corresponding value.

8.19 Comprehensive investigation powers are provided for to identify and trace proceeds of crime, including: production orders, search powers and financial information orders and account monitoring orders. There is also a sound framework for civil forfeiture investigations.

8.20 There are various tools available to law enforcement authorities to provisionally seize/freeze assets with a view to confiscation. The Saisie Judiciare, which can be made ex parte, allows law enforcement to provisionally seize/freeze all realisable property of the defendant when criminal proceedings have been instituted or are to be instituted. In addition, an authorized officer may seize cash for up to 96 hours if he has reasonable grounds for suspecting that it is tainted cash, and the AG may apply to the Bailiff for an order authorizing the detention for a longer period. Furthermore, where the AG has reasonable grounds to believe that property held in any bank account is tainted property, he may apply for a property restraint order prohibiting the withdrawal, transfer or payment out of the bank account of the property, or part thereof. In cases where the FIU is considering a disclosure regarding a request to proceed with a transaction/ relationship and issues a No Consent, this acts as an informal freeze as financial institutions will not wish to expose themselves to prosecution.

8.21 The confiscation framework is very wide and provides for confiscation where a person has benefited from "any relevant criminal conduct", which means the offences for which the defendant appears to be sentenced, together with other offences which the Court may take into consideration when passing sentence. The amount a defendant is required by a confiscation order to pay shall be the amount assessed by the Court to be the value of the defendant's benefit from the relevant criminal conduct and therefore property corresponding to the property laundered or the proceeds of crime may be confiscated

8.22 In terms of non-conviction-based confiscation, the law applies to property held in bank accounts and contains a summary procedure for the expedited forfeiture of monies subject to an informal freeze (No Consent) for 12 months or more[38]. Tainted cash/monies in bank accounts may be forfeited unless the defendant proves to the Court that the property is not tainted. Property is tainted if it is used in, or intended to be used in, unlawful conduct or obtained in the course of, from the proceeds of, or in connection with, unlawful conduct. Instrumentalities may be confiscated: the law provides the Court with the power to deprive an offender of property used or intended for use for the purpose of crime.

8.23 The law also provides for the enforcement of foreign non-conviction-based orders, with associated powers to make a property restraint order, which may be applied for an ex parte basis.

8.24 In Jersey's 4th round mutual evaluation by Moneyval, concerns were raised by the evaluation team regarding Jersey's ability to confiscate monies which were given to third parties as gifts, particularly those that were placed into trust where the settlor retains a beneficial interest.

8.25 Amendments to the POCL have been consulted upon which will enable LEA toattack property which was gifted away by a defendant within a prescribed period of five years prior to the offending. Following consultation, it has been agreed that this 'claw-back' should be limited to gifts into trust where: the settlor retains a benefit; there is a power to add the settlor as a beneficiary; or where the letter of wishes anticipates the settlor benefiting from trust assets.

[38] See further Section 4.4 – Quality of FIU Intelligence Gathering and Processing.

8.26 FATF Recommendation 4(d) requires measures to enable the confiscation of property of a corresponding value to the property described in 4(a)-(c) including instrumentalities. This is a gap in Jersey's legislation and is currently being reviewed as part of a wider consultation on gaps against the 2012 FATF Recommendations.

8.27 The Evaluation Team noted that previous conduct provisions of the now repealed Drug Trafficking (Jersey) Law 1988 had not made their way into the POCL. An amendment to the POCL was adopted in 2018 which now means that a single qualifying offence (i.e. liable to one or more years imprisonment) may trigger the assumptions which the Court can make regarding criminal benefit and the quantum of that benefit.

Statistics

8.28 Between 2013 and 2017, the amounts confiscated (without money laundering charges) for drug trafficking was GBP 304,195.50 and for fraud GBP 908,380.17 and USD 462,972.72.

8.29 In those cases where money laundering was the predicate offence and money laundering was charged amounts of GBP 5,302,326.54, USD 350,857.51 and EUR 109,216.09 were confiscated.

8.30 In cases where corruption was the predicate offence, and money laundering was charged, amounts of GBP 3,281,897.40 and USD 540,330.69 were confiscated.

Module 4: Quality of FIU Intelligence Gathering and Processing

Assessment: 0.4 Medium /Low

8.31 Jersey has a standalone financial intelligence unit (FIU)[39]. The FIU sits within the JFCU. The core functions of the FIU are distinct from other policing functions and the unit's autonomy within the police structure is supported at a strategic level by the Senior Management Team (SMT) (which includes the Acting Deputy Chief Officer). The FIU is a member of the Egmont Group of Financial Intelligence Units in its own right. The primary function of the FIU is to receive, analyse, enhance and disseminate intelligence efficiently and effectively. The FIU faces challenges at each stage of its functions.

8.32 In relation to the receipt function, the SAR form used by the FIU does not collect all of the intelligence that is needed to evaluate and prioritise SARs. The current SAR system does not automatically reject incomplete returns nor does it permit automated analysis and interrogation. This affects the FIU's ability to produce meaningful statistics and strategic analysis for both Government and the private sector in a timely fashion. At the grading stage, SARs are: (i) graded; or (ii) closed. Currently there are two levels for grading SARs received: (i) code 1 (priority); and (ii) code 2. A third code is to be introduced to allow analytical resources to be better prioritised. It is not clear that restraint of assets is actively considered at the grading stage and there should be a "gating" process that leads to immediate action being taken where there is a risk of dissipation of assets. The FIU does not receive or analyse threshold transaction reports (TTRs). Such transaction reports, e.g. reports about certain countries or about use of particular products or services, could potentially hold vital intelligence that may provide a link to criminality where there was not previously any suspicion.

[39] The FIU has been prescribed under the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 2015 (the PoC Regulations) which are made under Article 41B of the POCJL

8.33 The quality of SAR reporting has been identified as an issue of concern since there are often large differences in the standard of SAR reporting across entities.

8.34 A number of templates are used to respond to SARs: (i) consent; (ii) no consent; (iii) consent to exit only; (iv) exit to be reviewed; and (v) acknowledgement. These letters are to be reviewed, since it is not clear that their content is entirely consistent with statutory provisions. In particular, the "exit to be reviewed" response deals with requests from industry to exit a business relationship, and can be an important tool in combating ML, as withholding consent can give the FIU and partner agencies time and opportunity to instigate a criminal enquiry and confiscate criminal assets that may otherwise leave Jersey.

8.35 Generally, during the relevant time period of the report, the FIU has not had access to all of the resources necessary for it to effectively perform its functions. In particular: (a) Prosecutorial input is needed earlier in the SAR analysis process in order to identify strong cases and discount weak ones (which waste resources); (b) There is a need for tax expertise and to develop its understanding of complex structures, including legal persons and legal arrangements. Updated triage procedures (see below) should address this; (c) Processes are largely manual – due to limitations in ICT systems.

8.36 The extent to which intelligence disseminated by the FIU is used by law enforcement in Jersey is not entirely clear. The FIU reports that around one-third of investigations by JFCU Ops had been identified from FIU intelligence, whereas JFCU Ops reports that two-thirds of its current workload were attributed to SAR intelligence origin. This perhaps reflects the absence of an agreed way of measuring the extent to which intelligence disseminated by the FIU is used in practice.

8.37 Intelligence is regularly disseminated overseas. Where there is a situation of intelligence relating to a country who is not a member of the Egmont Group, then intelligence may not have been shared domestically or overseas.

8.38 In terms of strategic analysis, the last report produced on trends and typologies was in 2015 by the GoJ. This is an area that requires attention by the FIU and other authorities. Changes to recording processes has already commenced, to improve early identification of useful data for sharing with industry and partner agencies.

8.39 As a matter of law, the AG must consent to what intelligence can be disseminated. However, in practice, the FIU disseminates intelligence on a spontaneous basis with administrative and law enforcement authorities under the authority of the AG's Guidelines which give broad consent to share intelligence particularly to other FIUs belonging to the Egmont Group. Where the JFCU is in any doubt, or where, even in circumstances where JFCU is authorised to make a disclosure it would prefer to obtain AG's specific agreement, then it may approach the AG on individual case basis.

8.40 The FIU has faced difficulties in the past to obtain sufficient funding for training purposes. This has led to the absence of appropriate and relevant up-skilling of staff and a process that will not have kept pace with developments in ML and TF.

Module 5: Capacity of Resources for Financial Crime Investigation (Including Asset Forfeiture)

Assessment: 0.5 (medium)

8.41 This module focuses, on the JFCU and the ECCU, notwithstanding that it appears other parts of the SOJP also undertake ML investigations.

8.42 The JFCU is comprised of: (i) the FIU; (ii) JFCU-Ops; and (iii) Jersey Customs and Immigration Service (JCIS) (asset tracing and confiscation related to drug importation and other offences). Both the FIU and JFCU-Ops are headed by police inspectors who report to a separate Chief Inspector (Chief Inspector of Intelligence/Chief Inspector of Crime respectively).

8.43 Within the JFCU, JFCU-Ops investigates more complex predicates and ML that may affect the integrity of the island's finance sector, this includes any foreign predicate activity. Investigations focus on legal persons and legal arrangements (and associated individuals) engaged in complex transactional and multi-jurisdictional structures and relationships.

8.44 FCU-Ops is also responsible for asset tracing with the assistance of the LOD. However, the JCIS team, which consists of 3 officers positioned within the JFCU, is responsible for asset tracing and confiscation investigations that run parallel to SOJP drug trafficking investigations.

8.45 JFCU-Ops comprises a team of 9 criminal investigators, which represents an increase of 4 since the last MONEYVAL evaluation and reflects a commitment to resourcing that had been made at the time of the last evaluation. Detective constables within JFCU-Ops are 'ring-fenced' and protected from other policing duties - except in exceptional circumstances. The recent successful bid for 2 extra investigators is expected to be sufficient to manage any upturn in workload as a result of an increased focus on ML investigations associated with foreign predicate offences (an objective shared with the FIU).

8.45 Officers in JFCU-Ops are experienced serving, or previously serving, police officers with an investigative mind-set. Investigators in JFCU-Ops are required to complete the ICA Diploma in AML/CFT, the NTFIU CFT training programme, and all have done so or will do so by the end of 2020. They have also been trained by the City of London Police in financial crime investigation.

8.46 Criminal investigations are instigated via a number of sources, including without limitation: (i) FIU intelligence packages (originating from SAR disclosures); (ii) the Tripartite Group; (iii) criminal complaints; and (iv) covert police investigations.

8.47 Notwithstanding Jersey's position as an IFC, the number of ML investigations of standalone/autonomous ML (with foreign predicates) and third-party ML is low. Most investigations have focussed on the predicate offence and not, also, any associated ML. This can be attributed to a combination of the following factors: (i) absence of an overarching national ML/TF strategy; (ii) investigators have been reluctant to pursue ML without evidence of a predicate offence (notwithstanding that it is their responsibility to convert intelligence into evidence); (iii) the JFSC has taken on some cases in the past as opposed to instigating a criminal investigation; and (iv) prosecutors have preferred to prosecute customary law offences (when faced with a choice between trial systems) and there was some impact by the deficiencies in Jersey's definition of ML which was addressed

in 2014). The low number of investigations also results from defendants and evidence generally being outside Jersey leading to insufficient availability of evidence particularly where overseas LEAs are unwilling to cooperate (which is not uncommon) or the absence of any evidence at all.

8.48 No "parallel financial investigation policy" is in place, consequently parallel investigations are not conducted for all predicates investigated.

8.49 For the above reasons, it appears that a low priority has been attached to ML investigations in recent years (with one notable exception). ML investigations have tended to focus on domestic predicates (predominantly drugs). It is not currently clear whether the number of investigations (predicates and ML) that lead to prosecutions is reasonable.

8.50 The ECCU was formed in 2017 and became operational in 2018 to address the specific deficiency in the lack of more complex ML investigations. It is positioned within the LOD and investigates and prosecutes complex fraud, ML and TF cases. The ECCU's constitution and operating protocol are discussed in module 7 of this report.

8.51 The ECCU has the same powers as those available to JFCU-Ops. August 2018 saw the enactment of the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018, (the Forfeiture Law) which allows the ECCU to make an application to the Royal Court for the seizure of funds suspected to represent the proceeds of crime, where a prosecution has not taken place, and reverses the burden of proof so that the subject is required to provide evidence of the probity of the funds.

8.52 The ECCU have the capability to develop its own cases for investigation from alternative sources alongside intelligence that is disseminated by the FIU.

8.53 The ECCU is the sole agency within the LOD that also investigates and applies for civil asset forfeiture orders under the Forfeiture Law. Within days of the law coming into force, a forfeiture order was made by the Court for circa GBP 97,000. Subsequent applications have all been successful: Liu (USD 21,694). Freemantle (GBP 4,823) and Truk (USD 16.8m). The Truk settlement was agreed through settlement and the forfeited sums were distributed between the Criminal Offences Confiscation Fund ("COCF") and the three charitable institutions (one local charity and two international charities), who were the beneficiaries of the trust. It is believed to be the largest single asset forfeiture order in a Crown Dependency or Overseas Territory.

8.54 Qualifications and training for officers of ECCU is largely the same as that summarised above for JFCU Ops.

Module 6: Integrity and independence of Financial Crime Investigators (Including Asset Forfeiture)

Assessment: 0.9 Close to excellent

8.55 All investigators (SOJP and ECCU[40]) are employees of the SOJP and must adhere to high professional standards, policies and procedures, codes of conduct and legislation. These provide a framework to ensure that the conduct and integrity of staff is clearly set out and enforced so that the community

[40] ECCU currently has two police officers seconded from the SOJP to conduct financial crime investigations. These officers and any others assisting a particular investigation via mutual assistance arrangements remain members of SOJP and their conduct and integrity are subject to the procedures and lawful requirements of all police officers.

has confidence that police and civilian officers act with fairness, integrity and impartiality in all actions.

8.56 As staff positions within the JFCU are increasingly held by civilian officers, GoJ policies and procedures become more prevalent.

8.57 The SOJP is a rank-orientated organisation. The respective heads of JFCU Ops and the FIU are, as noted previously, Inspectors who have reached their position showing the qualities, integrity and professional standards expected of the rank.

8.58 All SOJP staff are vetted at security clearance level 3 (valid for 10 years) and through Jersey and UK national criminal database checks (PNC/PND). However, financial checks are not undertaken on staff and there is a higher level of security clearance (4 levels in DBS structure). Pre-employment criminal record vetting checks are conducted on all staff, and officers are additionally subject to (UK) national Security Clearance vetting.

8.59 From the launch of an investigation, investigators work freely and independently from other authorities. Financial investigations are not vetted or scrutinised by outside third parties and are conducted without political or social influence and/or pressure. Indeed, such investigations may be of a covert nature.

8.60 Investigations proceed on the merits of the evidence available.

8.61 The convictions of an ex-magistrate in 2012 and a former Parish Constable in 2013 both separately convicted and jailed for fraud, and a former States' Deputy arrested for breaches of data protection legislation are considered proof that no person is beyond the scope of criminal investigation in Jersey. There was also the recent prosecution and conviction of an Assistant Chief Minister for a driving offence leading to his resignation from the Government.

8.62 When conduct of police officers falls below the expected standard or matters of integrity or criminal allegations are raised, procedures are in place both internally via the Professional Standards Department (PSD) and externally via the independent Jersey Police Complaints Authority (JPCA) to deal with these matters.

8.63 Breaches of expected professional conduct by, and criminal allegations about, police officers are managed by the PSD (which can resolve the matter with a range of sanctions).

8.64 The JPCA is an independent body of lay people that oversee the conduct of investigations of police officers (including honorary police officers). There have been no investigations of staff related to corruption or criminal conduct for financial gain. Convictions of SOJP staff in recent years have related to road traffic offences and use of police data for personal benefit.

8.65 The SOJP has enjoyed high satisfaction ratings from the public for several years. 2017 and 2018 reports from the Jersey Police Authority cite high levels of public satisfaction.

8.66 JCIS officers (who form part of the JFCU) are civil servants who are, therefore, subject to the provisions of the Official Secrets (Jersey) Law 1952, the GoJ Code of Practice on Employee Conduct and other relevant disciplinary policies and rules.

8.67 The Viscount is the courts' executive officer in Jersey and is, therefore, principally required to execute orders of the courts. The Viscount has the authority to seize, maintain, manage and confiscate assets. The Viscount manages seized assets in accordance with court orders and directions and is not influenced by either defence or prosecution in the way in which those assets are managed or confiscated.

8.68 When the Viscount is ordered to carry out a saisie judiciaire, all the realisable property held by the defendant in Jersey vests in the Viscount. The Viscount has the duty to take possession of and, in accordance with the Court's directions, to manage or otherwise deal with any such realisable property. The Viscount is not under any obligation to improve or increase the value of any assets held. A case recently cited in a press release by the AG's office relates to the seizure of funds linked to General Abacha of Nigeria where over USD 259m has been placed in a recovery fund (see link below). The Jersey Court of Appeal (2017) has confirmed that, once a confiscation order has been made, the primary duty of the Viscount is to ensure that the assets are realised in such a manner as enables that confiscation order to be paid and that it is not the Viscount's duty to conduct the realisation in such a way as maximises the value of the assets realised.

Corruption

8.69 As a small jurisdiction, Jersey is not covered in Transparency International's CPI. The UK is ranked 11 out of 180 jurisdictions in the 2018 survey[41] and this is considered to provide a good indication as to where Jersey might be ranked. In a press report[42] in 2018, it was reported that there had been no more than 5 allegations of corruption passed to the AG, since allegations of misconduct in public office are difficult to prove.

8.70 Jersey has recently been evaluated by the United Nations Office on Drugs and Crime, in relation to the implementation of United Nations Convention Against Corruption. The Implementation Review Mechanism (IRM) is a peer review process that assists States parties to effectively implement the Convention. The most recent report is included in the report of the United Kingdom (who extends conventions to the Crown Dependencies and acts on their behalf in international law) and covers compliance with Chapter II (Preventative Measures) and Chapter V (asset recovery). The Executive Summary is now published[43] with the full report pending publication.

Module 7: Capacity and Resources for Financial Crime Prosecutions (including Asset Forfeiture)

Assessment: 0.7 High

8.71 Jersey has dedicated considerable resources for the prosecution of financial crime and money laundering and asset forfeiture in economic crime cases. This is exemplified by the recently established ECCU. Jersey's effectiveness is demonstrated by the significant number of convictions and confiscations. However, it is recognised that the overall number of money laundering prosecutions and convictions (other than for drug trafficking offences and self-laundering or 'cash mules') is not currently at a level to support a higher rating for this variable.

41 https://www.transparency.org/en/cpi/2018

42 https://jerseyeveningpost.com/news/2018/03/08/deputy-corruption-a-cancer-in-public-sector/

43 https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1901637e.pdf

Law Officers' Department (LOD)

8.72 The AG is the prosecuting authority in Jersey and all prosecutions are brought in his name. He and the Solicitor General head up the LOD. There are four full time Crown Advocates employed by the LOD. One of these Crown Advocates is the head of the Mutual Legal Assistance (MLA) team and the other the head of the ECCU team (see below). The other Crown Advocates are responsible for prosecuting most cases which come before the Royal Court which range from drugs cases to grave and criminal assaults and sexual cases, but also may include Money Laundering, particularly with predicate drug offences.

However, complex economic crime cases will either be dealt with by the ECCU, or, in some cases, an external advocate will be appointed as a Crown Advocate to prosecute a case.

8.73 The work of the LOD in prosecuting these cases is not hampered by restraints arising from either the number or expertise of lawyers. The AG is able to secure resources additional to those available internally and appoint advocates in private practice with capacity and expertise to prosecute complex financial crime. This occurred in significant Money Laundering cases such as AG v Bhojwani and AG v Windward. The instruction of external advocates has reduced sharply in recent years owing to recruitment of specialist lawyers and bespoke training.

8.74 The AG has an annual budget available to fund court and case costs. This includes the ability to instruct external counsel which may include specialist counsel in the United Kingdom. Further, the AG is also able to access a proportion of the funds held in the Criminal Offences Confiscation Fund, which is, in part, ring-fenced for the purpose of combatting financial crime in the event large cases exhaust court and case funds.

MLA

8.75 The MLA team processes all incoming and outgoing MLA requests. The MLA team is headed by a Crown Advocate and consists of two Jersey solicitors, two Assistant Legal Advisers and an experienced retired police Detective Constable who is now a civilian investigator.

8.76 The work of the MLA team is considered in more detail under Module 15 (international co-operation). However, at this point, it is worth recording that the MLA team now frequently examines documents, which it is asked to provide to requesting jurisdictions, in order to determine whether a local investigation/ prosecution should be opened.

ECCU

8.77 The ECCU was established in 2017 and is headed by a Crown Advocate (with substantial experience in prosecuting Jersey ML cases) who is attached to the JFCU. The ECCU is also staffed by two legal advisers and two assistant legal advisers. Two senior police officers (with financial crime experience) and a forensic accountant are also based in the LOD. ECCU is dedicated to the prosecution of complex fraud, money laundering and terrorist financing.

8.78 The existence of the ECCU contributes to the efforts made by Jersey to proactively identify and investigate money laundering, large scale complex fraud and terrorist financing offences. It does not focus on standard domestic ML associated with conventional drug dealing offences, which are successfully prosecuted by the general crime team of the Criminal Division. When considering the adoption of cases, regard is had to the prospect for significant confiscation under the Jersey civil forfeiture regime; prospects for conviction based confiscation; the quantum of alleged fraud and of money laundering; the complexity and seriousness of the alleged offending; the risk of significant damage to the reputation and integrity of the Island and the likelihood of significant compensation to members of the public in the Island or elsewhere. It is specifically provided that care must be taken to ensure the benefits of confiscation do not unduly influence decision making in the face of other public and victim interest.

8.79 The introduction of the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018, on 20 August 2018, represents a significant milestone in the development of Jersey's non-conviction based forfeiture regime

Module 8: Integrity and Independence of Financial Crime Prosecutors

Assessment 0.9 Close to Excellent

8.80 Jersey has a stringent framework which safeguards the independence and integrity of prosecutors.

8.81 All prosecutions are brought in the name of the AG. The AG's deputy is the Solicitor General (SG) and he or she may discharge any function appertaining to the office of the Attorney. Together, the AG and the SG are the "Law Officers."

8.82 The process for recommending the appointment of a Law Officer starts with a prospective applicant (a Jersey qualified lawyer) making an application to the Lieutenant Governor. Applicants are interviewed by a recommending panel consisting of the Bailiff, a senior Jurat and the Chairman of the Jersey Appointments Commission. The recommending panel then makes a recommendation to the Lieutenant Governor who transmits it to the Crown. The Law Officers are appointed by Her Majesty the Queen under Letters Patent and hold office subject to good behaviour until 70 unless they retire earlier. Only Her Majesty can dismiss a Law Officer, i.e. the Law Officers cannot be dismissed by any politician, civil servant or judge. Complaints about a Law Officer are made to the Lieutenant Governor and the full procedure for considering such complaints is published on the Law Officers' Department website.

8.83 Crown Advocates are advocates who are permanently employed within the LOD although, from time to time, advocates working in private practice are appointed as Crown Advocates for specific cases. Only the AG can appoint a Crown Advocate.

8.84 Employees of the LOD are subject to the following safeguards:

- they cannot be suspended or dismissed except with the consent of the AG and cannot be directed or supervised in the discharge of their duties as such an officer, by the Chief Executive Officer of the States, the States

Employment Board, a Minister or a person acting on behalf of such a person;

- they are subject to the States of Jersey Code of Conduct;
- they are subject to the LOD's Code of Conduct which is specifically tailored to lawyers working in that department;
- complaints against lawyers working in the Law Officers' Department are made to the AG (as opposed to an external body comprised of private practice lawyers) and are dealt with internally under a comprehensive procedure brought into force in 2013; and
- Advocates and solicitors are ultimately subject to the disciplinary jurisdiction of the Royal Court and may be referred to that Court by the AG if the above procedure is engaged and the lawyer has committed professional misconduct, with the ultimate sanction being a striking off.

8.85 Within the LOD, there is a clear separation between the Civil Division and the Criminal Division, and technology provides for ethical walls, where necessary, even within divisions. Conflicts, if they ever arise, are identified by lawyers and/or their supervisor and ethical walls used to mitigate against this.

8.86 The AG and SG are also constitutionally independent of one another (for example, the AG cannot dismiss the SG), which mitigates against conflicts which might naturally arise in a small jurisdiction where the Law Officers also provide advice to the legislature and government. In 2016, at the meeting of Law Ministers and Attorneys General of small commonwealth jurisdictions" the meeting noted the following: "Law Ministers and Attorneys General noted that in a number of jurisdictions the constitutional independence of the AG meant that the establishment of a separate office of Director of Public Prosecutions was unnecessary."

8.87 In recent years, Attorneys General have prosecuted a sitting Magistrate for fraud and a local lawyer for attempting to pervert the course of justice, ancillary to his father's money laundering conviction. This demonstrates a willingness to prosecute where necessary and not close ranks. The prosecution of high-profile individuals such as Bhojwani/Windward Trading and Curtis Warren for financial crime/drug trafficking further emphasise this.

8.88 As mentioned above under 9.6 Jersey has not, as a jurisdiction, published an anti-corruption strategy/policy which means that the variable cannot be graded as Excellent.

Module 9: Capacity and Resources for Judicial Processes (including Asset Forfeiture)

Assessment: 0.7 – High

8.89 Jersey has a system which enables complex financial crime cases to be heard before a Court consisting of a legally qualified judge and, in the case of statutory offences (money laundering, breaches of the MLO) and asset forfeiture, the judge is joined by two full time lay judges (Jurats) who are the 'fact finders.' In the case of customary offences (fraud, perverting the course of justice) the 'fact finders' are a jury of 12 citizens. In 2013, the States of Jersey re-affirmed that there is an obligation upon Ministers to ensure the judiciary has sufficient resources to discharge its duties.[44]

8.90 The Royal Court has two full time judges namely, the Bailiff and the Deputy Bailiff, the Chief Justice and Deputy Chief Justice, respectively, who are locally qualified lawyers and who will have usually also served as AG, and possibly Solicitor General, before taking office. Consequently, both the Bailiff and Deputy Bailiff will have had significant experience of money laundering and asset forfeiture in their previous roles as a Law Officer.

8.91 The judiciary is also comprised of three Jersey-based Royal Court Commissioners (two who are former Bailiffs) who the Bailiff may appoint to preside over any particular case. Such persons will often be appointed owing to their particular expertise and experience. Therefore, Commissioners who have acted in, or sat on, money laundering trials in the UK can deploy their invaluable experience in presiding over similar trials in Jersey.

8.92 As mentioned above, Jersey's court system has the benefit of lay judges known as Jurats, of which there are 12. In criminal cases, the Jurats act as the finders of fact in trials where the offender is being tried for a statutory offence such as money laundering. The Jurats also determine sentences for crimes where the offender is being sentenced before the Royal Court (less serious offences are tried and sentenced before the Magistrate's Court) and also form part of the Court when confiscation orders are being determined. Jurats are not usually legally qualified but come from a varied background of Island life which often includes having worked in the finance industry

8.93 The Royal Court is serviced by a full time Court service consisting of the Judicial Greffier and his department namely, the Judicial Greffe, who, in criminal matters, acts as the Court clerical service. The Viscount acts as the chief executive officer of the Royal Court. The Viscount and her department enforce court orders including saisie judiciaire and confiscation orders, acting as, inter alia, the asset management agency.

8.94 Specific training for the judiciary relevant to money laundering cases has not yet occurred, although the authorities are considering this, particularly through their regular contact with senior members of the judiciary in the United Kingdom. Training on money laundering in order to ensure that the Court is cognisant of its ability to draw "irresistible inferences" based on circumstantial evidence (without needing to identify or have proven the predicate offending) is also desirable. However, it must also be borne in mind that Jurats are 'fact finding' judges and any training provided must be appropriate. It is the role of the presiding judge, who is legally qualified, to direct the Jurats in his summing up on the principles which apply (as he would do with a jury in a trial of a customary offence).

8.95 The Courts are equipped with technology allowing, for example, witnesses to appear by way of video link. The Court also has recognised translators which can be used in cases where witnesses do not have a strong grasp of English.

8.96 The absence of a second Jury Court does impede the speed with which jury trials are concluded. However, there are plans underway to resolve this issue. The Court has, in the past, made necessary arrangements for large trials including financial crime matters to be heard elsewhere. The pre-trial process (dealing with matters such as disclosure) will usually take several months, and prosecutors' experience, during the last two years, has not been that courtroom availability has been a significant impediment to bringing financial crime matters swiftly before the Court. It is not considered that the time taken to bring matters to conclude trials is a problem, particularly given the size of the jurisdiction. The

Court now actively manages cases pre-trial including the issue of disclosure. There are no prescription periods for criminal offences, something which can cause difficulties in other jurisdictions.

8.97 Parallel to issues with physical Court space, the demands on the diaries of the Bailiff and Deputy Bailiff can affect their availability. Whilst Commissioners can be appointed to hear any case or matter, this still has to be done in a way which is financially manageable. Such practical difficulties are, however, commonplace amongst small jurisdictions.

8.98 Consideration was given by the NRA Vulnerability Group regarding the establishment of a separate Court for financial crime cases, with examples having been seen in Switzerland and Andorra. This might allow such cases to be heard more expeditiously and by specialist judges. However, on analysis it is considered that the five principal judges and the relevant Commissioners, selected specifically for their expertise, do have substantial experience in such cases and that ultimately cases would not be heard any more quickly.

8.99 One new statutory provision which will assist with effective case management is the requirement under Article 83 of the Criminal Procedure (Jersey) Law 2018, which came into force in October 2019. Article 83 requires the defendant to give a case statement to the Court and prosecution, setting out: the nature of the defence (indicating the matter(s) of fact on which the defendant takes issue with the prosecution and why); the particulars of fact on which the defendant wishes to rely; and any point of law the defendant wishes to take. This is seen as a major development which will enhance the case management of prosecutions and require the defendant to set out his or her defence at an early stage.

Module 10: Integrity and Independence of Judges (including Asset Forfeiture)

Assessment: 0.9 Close to Excellent

8.100 The judiciary in Jersey is independent and has high levels of integrity. It is able to conduct proceedings without interference, political or social pressure, corruption, intimidation or abuse of office. The pace or outcome of such proceedings are also not subject to interference, political or social pressure, corruption, intimidation or abuse of office. There is a robust code of conduct for the judiciary and complaints procedure for the judiciary, meaning that Jersey has a comprehensive framework against judicial corruption. However, Jersey does not, as a jurisdiction, have an anti-corruption strategy/policy, and this therefore permeates several areas of potential national vulnerability, including the matters discussed under this module.

8.101 The Bailiff is the Chief Justice of the Bailiwick of Jersey and is appointed by Her Majesty the Queen under Letters Patent and holds office until he reaches the age of 70 or is removed by Her Majesty for bad behaviour. The Deputy Bailiff is also appointed by Her Majesty and holds office on the same terms as the Bailiff and may discharge any function appertaining to the office of Bailiff. The role of Deputy Bailiff is advertised and a stringent recruitment process before a candidate is recommended to Her Majesty. The role of Bailiff is not advertised as it is customary for the Deputy Bailiff to succeed to this role when the Bailiff retires

[44] (P.92/2013) available at https://statesassembly.gov.je/assemblypropositions/2013/p.092-2013.pdf

8.102 The Bailiff is also the civic head of the Island and the President of the States of Jersey Assembly. On being sworn in, the Bailiff and Deputy Bailiff swear an oath of office which includes: "You swear and promise before God…that you will uphold and maintain the laws and usages and the privileges and freedoms of this Island and that you will vigorously oppose whomsoever may seek to destroy them; that you will administer justice to all manner of persons without favour or partiality…"

8.103 Commissioners may be appointed for the hearing of a particular cause or matter or a specified term. Where an appointment is made for a particular matter the appointment shall continue for the duration of the hearing of that matter. Where the appointment is for a term (normally a three-year term), the term shall be specified in the instrument of appointment although this term may, with the agreement of the Commissioner, be extended for such period as the Bailiff thinks appropriate. The Bailiff may, if the Bailiff thinks fit, terminate the appointment of a Commissioner on the ground of incapacity or misbehaviour. Commissioners swear an oath of office which is in similar wording to the Bailiff/Deputy Bailiff oath.

8.104 Jurats are the sole judges of fact in all civil and criminal trials, except where the latter is decided by a jury. Juries are the arbiters of facts for customary law offences (such as fraud) whereas Jurats sit in cases where the offence is statutory (examples include money laundering, terrorist financing, drug trafficking). The Bailiff/Deputy/Commissioner is the sole judge of law and has a casting vote on decisions of fact where the Jurats are split.

8.105 In 2002, the European Court of Human Rights stated that the Jurats are "usually individuals with a known history of sound judgment and integrity, which has been consistently demonstrated throughout a lengthy professional, business or civic life."[45] The Jurats' oath of office require them to swear to administer justice fairly to all: "You will administer sound and swift justice to rich and poor alike, without favour, according to the Laws, Customs and Usages enshrined in our Privileges, upholding the same together with our liberties and freedoms, opposing whomsoever would seek to infringe them."

8.106 The Jersey Court of Appeal is comprised of judges appointed by Her Majesty. Those appointed by Her Majesty generally consist of experienced QCs from the United Kingdom, retired High Court judges or members of judiciary of the other Crown Dependencies, with at least 10 years' experience. To ensure independence and impartiality no ordinary judge of the Court of Appeal shall, during the judge's continuance in office, practise at the Bar in Jersey or be concerned directly or indirectly, whether within or without Jersey, as counsel, solicitor, arbitrator or referee in any matter arising within Jersey. The judges are appointed under Letters Patent and hold office during good behaviour. They can only be removed from office by Her Majesty. Their oaths of office include the language in French, translated to English "You will administer good and timely justice to one and all, without exception"

8.107 The Court of Appeal is considered to provide a vital appellate oversight of the local judiciary, by an independent panel which will usually consist of a majority of judges from outside Jersey.

8.108 The Judicial Committee of the Privy Council, which is the highest appellate Court of Jersey, is constituted by Justices of the Supreme Court of the United Kingdom.

8.109 The Bailiff's Judicial Secretary will avoid allocating a case to a particular judge where there is an obvious conflict of interests. Other obvious conflicts may be noticed by the judge at an early stage, otherwise they may be raised by counsel and dealt with at a hearing. It is a matter for the judge to decide if he should recuse himself (AG v Barra Hotels). The test for recusal is well known and based on leading English jurisprudence such as Porter v McGill: whether a fair-minded observer, informed of all of the relevant facts and circumstances, would conclude that there was a real possibility that the judge was biased. The test is objective.

8.110 All members of the judiciary in Jersey are subject to the Judicial Code of Conduct. Complaints about the Bailiff/Deputy Bailiff are made to the Lieutenant Governor and the full procedure for considering such complaints is published on the Bailiff's Chambers website.

8.111 Complaints against other members of the judiciary, including Jurats, Judges of the Court of Appeal and Commissioners are made in accordance with a policy which is also published on the Bailiff's Chambers' website.

8.112 A former Magistrate was prosecuted and convicted in 2012 of fraudulent inducement to invest. This demonstrates that there is no bar to trials taking place against powerful members of society, even members of the judiciary.

8.113 Jersey has not, as a jurisdiction, published an anti-corruption strategy/policy which means that the variable cannot be graded as Excellent.

Module 11: Quality of Border Controls

Assessment – 0.8 Very High

8.114 As an Island of 45 square miles, the vast majority of passenger, vehicular, and freight traffic passes through the seaport of St Helier and Jersey Airport which are both staffed, seven days a week, by Customs and Immigration Officers. In addition, Officers are on duty at the Post Office every day when mail arrives into the depot.

8.115 The border controls at the harbour/airport are considered robust which is reflected, statistically, in the number of searches that take place, and the quantity of drugs, cigarettes and cash seized.

8.116 For many years Customs and Immigration Officers have successfully developed intelligence led operations resulting in the seizure of commercial quantities of drugs, the proceeds of crime and the dismantling of drug smuggling syndicates. Officers are not, due to resources, normally deployed to non-commercial small ports unless specific intelligence exists. As a result, it is possible to arrive in, and depart from, the Island without being subject to a customs control.

Module 12: Comprehensiveness of Customs Regime on Cash and Similar Instruments

Assessment – 0.7 High

8.117 Jersey has a comprehensive legal and regulatory framework which adheres to FATF international best practice to detect and deter unauthorised physical

cross-border transportation of cash and bearer negotiable instruments.

8.118 Prominent signage at the ports (both inbound and outbound) informs travellers of their AML obligations to disclose cash and of the need to make appropriate declarations to Customs of goods in excess of allowances. However, it is recommended that public information and signage is reviewed on an ongoing basis in response to any legislative or regulatory changes that come into effect.

8.119 The term disclosure system refers to a system whereby persons are required to make a truthful disclosure to the designated competent authorities upon request. The term declaration system refers to a system whereby persons are required to pro-actively submit a truthful declaration to the designated competent authorities.

8.120 Whilst a disclosure regime of the kind currently operated in Jersey is acceptable under FATF recommendations, the European Parliament is proposing to tighten the EU declaration regime.

Module 13: Effectiveness of Customs Controls on Cash and Similar Instruments

Assessment – 0.6 Medium High

8.121 Jersey enforces customs laws and regulations proactively and effectively. A risk-based and intelligence-led approach results in the detection of unauthorised transportation of cash and negotiable instruments, albeit as noted in module 12, some improvements can be made by the introduction of a “cash declaration” regime.

8.122 Customs and Immigration officers are empowered to carry out searches on persons, their baggage and their means of transport and are tasked with controlling the movement of prohibited and restricted goods, including cash. Law enforcement staff are assigned specifically to border protection duties and are supported by intelligence, investigation and freight specialists. While this is considered sufficient resource further resources to conduct more screening and searches would further enhance effectiveness.

8.123 Procedures are also in place with security search providers at both the harbour and airport whereby officers are notified when cash is found either on a passenger or in their baggage on export.

8.124 A risk-based and intelligence-led approach is adopted for the examination of departing passenger and vehicular traffic. While postal and freight traffic is examined on a daily basis, the overall proportion of items examined is low.

8.125 A specially trained dog is retained to detect large amounts of cash carried personally by passengers, within baggage, by freight and through postal traffic.

8.126 A minimum of two cross-border cash risk assessments are conducted each year. These exercises are led by officers with assistance of drug and cash-detector dogs. Results from these exercises informs the assessment of ongoing risks and resource allocation.

8.126 There have been a number of successful prosecutions of individuals who have

[45] Snooks and Dowse v UK (Applications nos. 44305/98 and 49150/99)

attempted to export cash (generally suspected of deriving from the proceeds of drug trafficking). Examples include:

- AG vs Turney 30 September 2016 - GBP 42,000 – 2 years' imprisonment, suspended
- AG vs Brennan 16 December 2016 - GBP 11,660 - 12 months' imprisonment
- AG vs Dixey and Pereira 20 May 2017 - GBP 36,420 – Dixey 18 months' imprisonment

8.127 Revenue Jersey's expanded information sharing powers, introduced from 1 January 2020 have created a legal gateway for the first time for the sharing of this information.

8.128 Rarely, due to other operational requirements, is it not possible to deploy an officer to respond to suspicious movements of persons or goods.

8.129 Customs will be reviewing existing data sharing gateways and will be exploring opportunities to better establish whether or not transportation of cash from Jersey derives from tax evasion. It is recommended that work is undertaken to understand why cash, comprised of Jersey bank notes, is banked outside the Island and to establish the role of UK clearers in this process.

Module 14: Effectiveness of Domestic Cooperation

Assessment: 0.6 Medium High

8.130 A number of changes have been made recently to improve domestic cooperation

8.131 This is perhaps best illustrated by the tripartite forum. Members comprise seniorrepresentatives from the JFSC, JFCU, LOD and, more recently, ECCU. This forum has provoked a great deal of cooperation and has brought all agencies together. Tripartite meetings are scheduled bi-monthly and are supplemented by case specific meetings. Meetings develop cooperation, assess and develop agreed acceptance criteria for new cases, and review ongoing investigations where there is a shared investigative nexus. However, investigation case acceptance criteria are not considered by all parties to be clear and, where FIU cases have not been taken on in past, reasons and 'remedial' work required have not been recorded. This does not facilitate inter-agency working. Further, there is no formal process for conducting 'lessons learned' reviews. They are, however, undertaken on an ad hoc basis.

8.132 There are various agreements in place between different stakeholders on operational cooperation. The AG has a "Joint Working Framework Agreement" with the JFCU-FIU and has given guidelines on the onward transmission of suspicious activity reports. An Operating Protocol[46] is in place between the ECCU and the JFCU to provide clarity on essential issues such as adoption criteria for ECCU cases, access to financial intelligence, and mutual support. An MoU is in place on the investigation and prosecution of financial crime[47] between the Chief Minister, SoJP, AG and JFSC. The JFSC has entered into MoU with, inter alias, the Channel Islands Financial Ombudsman, Jersey Gambling Commission (JGC), SoJP and the Law Society of Jersey (LSJ). One area of operational cooperation which requires improvement relates to the sharing of

[46] https://www.gov.je/Freedom%20of%20Information%20library/ID%20FOI%20Economic%20Crime%20and%20Confiscation%20Unit%20-%20Operating%20Protocol%2020180213.pdf

[47] Signed by the Chief Minister, States of Jersey Police, Attorney General and JFSC and effective since July 2018. The terms of the agreement provide for it to be made publicly available.

tax information although this has begun to be addressed through the improved powers in the Revenue Administration Law ("RAL") from 2020.

8.133 A standing government-led working group namely, the Financial CrimeEnforcement - Government Oversight Group (FCE-GOG) comprising senior representatives from Government, SoJP, LOD and JFSC is responsible, amongst other things, for reviewing resource allocation and training programmes for financial crime investigation and prosecution. Members are also requested to report regularly on the development of long-term resourcing and training in the area of financial crime investigation and prosecution, though this has not been done. Reports are expected to consider education, training, career-progression and external support to develop expertise. The group is expected to meet on a quarterly basis but has not met for some time now.

8.134 The JFSC, Government of Jersey, the Law Draftsman's Office and the LOD meet monthly to discuss progress on various law drafting projects, including those relating to AML/CFT legislation.

8.135 The JFCSG has been referred to in Module 1. It is responsible for co-ordinating the actions of the Island to mitigate the risk of financial crime. Whilst meetings of the JFCSG are held regularly there is: (i) insufficient AML/CFT resource within Government; and (ii) insufficient direction, oversight and coordination of AML/CFT policy and strategy by the Government, to ensure that the JFCSG delivers its priorities. This is considered under Module 1.

8.136 Reporting entities are involved in the development of policy on an ad hoc basis. For important areas of policy development, formal consultation with industry (both directly and indirectly through Jersey Finance Limited – the representative body of the finance industry in Jersey) and others affected is undertaken by the JFCSG.

8.137 The JFSC and Government regularly attend meetings of the Jersey Bankers' Association (JBA), the Jersey Funds Association (JFA), the Law Society of Jersey Commercial Sub-Committee (the Law Society) and the Jersey Association of Trust Companies (JATCO) at which AML/CFT law, regulations and guidelines are discussed from time to time. Ad hoc meetings are also held with other trade bodies.

8.138 There is extensive public/private sector cooperation within the NRA project, and each of the sectoral ML vulnerability teams chaired by the JFSC include representatives of reporting entities. However, there are currently no formalised arrangements in place to secure strategic engagement from industry in Jersey's AML/CFT planning.

8.139 The Law Society of Jersey is able to refer matters touching upon potential criminal allegations. It did so in the Manning case.

8.140 Locate Jersey and the Population Office play an important role in regulating who can reside or set up businesses in Jersey. However, it does not appear that the role of the two departments in tackling ML is appropriately recognised, and information sharing gateways in place between these departments on the one hand and the LOD and SoJP on the other, do not appear to be sufficient (though workarounds are in place). Further, the JFSC does not share adverse regulatory data with Locate Jersey/Population Office, notwithstanding that Jersey is actively encouraging finance professionals to relocate to Jersey.

Module 15: Effectiveness of International Cooperation

Assessment: 0.5 Medium

Introduction

8.141 Jersey has a broad legal basis for providing international cooperation in relation to money laundering. However, less evidence is available to demonstrate that cooperation provided by LEAs, the FIU and the JFSC is: (i) provided rapidly, constructively and effectively; or (ii) provided on an urgent basis.

8.142 The MLA Team has available to it excellent technology and the support of the Law Officers' Department budget which is substantial. They are thus well resourced both in terms of technology and finances.

8.143 The AG has published guidelines for countries seeking MLA from Jersey. Requests are prioritised where a Requesting Authority advises of a need for urgency. In such cases the Request is reviewed upon receipt and provided all legal requirements are met and the time frame is practically possible, it can be expected that the Request will be executed within the required timeframe. This is not always possibe for reasons beyond the MLA team's control, for example, a Request to serve process on a witness/defendant to appear in a foreign court on a specified date and that date has already passed (in one case this was due to the length of time taken for the Request to be processed via the central authority of the Requesting jurisdiction). In terms of incoming requests, between 2013 and 2017, 269 incoming requests were made to the AG. 55 of these requests were related to money laundering. The majority of MLA requests come from the United Kingdom (UK) although requests are received from across the world.

8.144 Between 2013 and 2017, 16 outgoing MLA requests were made which were money laundering related, with 47 outgoing MLA requests in total.

8.145 Recently, Jersey benefitted from an asset share with the US for its co-operation in a long-running investigation into funds gifted away by a notorious drug baron.

8.146 Law enforcement does not retain statistics on requests for, or access to, beneficial ownership and control Information (other than under the Exchange of Notes process – see below). However, all authorities confirmed that no issues are experienced in practice, with relevant trustees being identified through liaison with the JFSC. MLA Requests for evidence of beneficial ownership are always executed in a timely manner where the Request itself fulfils the legal requirements. Often, they do not. It is to be expected Requests (in relation to Jersey registered companies) would be more straightforward than Requests for other forms of evidence. The reason for this is that it is known exactly what records are held by the Companies' registry, a standard form of notice is used and the records are invariably produced within the required time period (notably where the Notice period is fore-shortened due to time critical factors). Evidence from partner agencies in other jurisdictions is not available to corroborate this confirmation.

8.147 The AG consistently provides BO records (whether the company is held in a trust or not) to competent authorities in criminal cases (and, most significantly, has been doing so since 1991 in relation to cases of serious fraud and since 2001 in other criminal cases). Also, the AG is able to obtain BO records in relation to non-Jersey companies administered in Jersey by issuing notices upon the relevant

Financial Service Provider in possession of the foreign company records.

8.148 The FIU can also request intelligence from overseas FIUs (via Egmont) and law enforcement agencies. Information has not been provided on the number of requests made by the JFCU-FIU to assist with its analysis of cases designed to support domestic ML investigations in respect of foreign predicate offences. Nor is it clear why there are so few outgoing requests for supervisory information, particularly given the number of TCSPs headquartered in Jersey with overseas operations. However, feedback provided from foreign FIU's on information provided has been very positive.

8.149 The CAR Law provides for the enforcement, in Jersey, of non-conviction-based confiscation orders made in another jurisdiction. Substantial funds held in Jersey have been returned to authorities in other countries – notwithstanding that there has been no criminal prosecution in those other countries. This has included GBP 1bn to Italy (Riva) and USD21m to the US (Bengis). Jersey will return seized funds linked to General Abacha to Nigeria through an asset sharing agreement to be negotiated between Nigeria, the US and Jersey.

8.150 The JFSC has wide statutory powers to exchange information with foreign counterparts. It has published a Handbook on International Cooperation and Information Exchange on its website and has a procedure for prioritising incoming requests for assistance including urgent requests.

8.151 In 2016, Jersey along with Guernsey, the Isle of Man and six British Overseas Territories, signed a bilateral agreement with the UK which committed Jersey to providing UK law enforcement agencies with information about the beneficial owners of companies incorporated in the Island. This arrangement, which is known as the Exchange of Notes (EoN), came into force on 1 July 2017.

8.152 A periodic statutory review to assess the effectiveness of the EoN has now been completed and presented to the UK Parliament. The report found that overall the EoN is functioning well and "has been extremely useful in accessing the information needed to support ongoing investigations". During the first 18 months of operation, 26 requests for information from Jersey were made – responses were provided for all requests made, almost all within the agreed timeframe.

8.153 Jersey is a signatory to the OECD's Multilateral Convention on Administrative Assistance in Tax Matters (MAAC), under which it has the ability to exchange information with all other jurisdictions (other than the UK and its associated and dependent territories – who are considered the same jurisdiction for the purposes of the MAAC) which have also signed and brought the convention into force (currently more than 110. In addition to these relationships Jersey has agreements for exchange of tax information with the UK, Guernsey, the Isle of Man and the US, all of which have been assessed by the OECD's Global Forum on Tax Transparency and Exchange of Information and found to be in line with the global standard. It is Jersey's policy not to decline a valid request for exchange of tax information. Requests have been received and responded to from 35 jurisdictions to date.

8.154 Strategically, FIUs and LEAs from the three CDs and Gibraltar (Quad Island group) meet regularly to discuss relevant issues. There is also an annual CD meeting during which trends and typologies are discussed. There are bi-annual partnership meetings with the UK National Crime Agency and the CDs.

8.155 In the Q4 2018, the GoJ requested input from competent authorities in peer countries on their cooperation experience with Jersey over the past 4 years. Feedback was received from six FIUs. Responses were broadly positive.

8.156 LEA feedback was received from four jurisdictions. Responses were positive.

8.157 United Nations officials have recognised Jersey's good practice in returning stolen assets to their rightful country. At an international meeting in Addis Ababa, the Officer-in-Charge of the Corruption and Economic Crime Branch of the United Nations Office on Drugs and Crime (UNODC) said: "UNODC recognises the innovative work that the Governments of Kenya, Jersey, Switzerland and the UK have undertaken in developing the Framework for Return of Assets from Crime and Corruption in Kenya (FRACCK). The FRACCK is a novel approach to facilitating asset return and has generated interest internationally. The international expert meeting on the return of stolen assets provided a valuable opportunity for officials from Jersey and Kenya to jointly present on lessons learned from the FRACCK; this dialogue is important for strengthening good practices on asset return to foster sustainable development."

Module 16: Availability of internal audit

Assessment: 0.7 – High

8.158 Jersey is served by a substantial professional audit community. The accountancy sector (which includes auditors) employs 1,160[48] people, servicing approximately 19,000[49] clients and generating a fee income through 2016 and 2017 of GBP 110,000,000[50] pa. Jersey's broad range of auditors provide independent audit services to all types of legal persons and arrangements established under Jersey law (including companies, trusts, partnerships, foundations, non-profit organizations and charities) and, in addition, provide audit services to many non-Jersey entities which are administered from within the Island. An accountancy sector of 44 audit firms when considered against Jersey's population of circa 105,500 demonstrates considerable strength of infrastructure.

8.159 Despite this, the scope of Jersey's statutory audit requirements is quite narrowly drawn. Statutory audit obligations in respect of legal persons and legal arrangements established under Jersey law are prescribed only for: (i) public companies (and private companies that are treated as public companies); (ii) market traded companies "MTCs"; and (iii) entities regulated by the JFSC under financial services legislation.

8.160 There is no statutory audit requirement for other types of legal persons or legal arrangements, including private companies, limited liability companies, foundations and limited partnerships. However, many legal persons and legal arrangements that are not subject to statutory audit requirements are administered by trust and company service providers (TCSPs) who are regulated by the JFSC and are required to maintain proper records for those persons and arrangements. As a result, a form of 'independent audit' is applied to structures under administration which would not otherwise be subject to any form of audit in a sector which is particularly vulnerable to money laundering. This involves oversight by the compliance officer, MLCO and MLRO of regulated TCSPs, which are themselves subject to supervisory examination by the JFSC. Regulatory

[48] See page 9 of https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Jersey%20Labour%20Market%20Dec%2017%2020180410%20SU.pdf

[49] Phase 2 Data Collection responses to BA1 and BB1 (at 31 December 2017)

[50] see page 5 of https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Finance%20and%20Legal%20Sector%20GVA%202017%2020180704%20SU.pdf).

examinations usually include sample testing of underlying client files and look at whether transactions are properly understood and scrutinised.

8.161 Moreover, many legal persons and arrangements choose to have anindependent audit for varying reasons, including investor requirements (e.g. mergers or acquisitions), bank or other lender commitments, good corporate governance (e.g. group structures) and other stakeholder demands. It is considered that non-statutory audits will form a sizeable part of the audit market in Jersey, though statistics are not available to support this.

Module 17: Level of Financial Integrity

Assessment: 0.8 Very High

8.162 Jersey has a significant professional services community which is longstanding in its existence. This is particularly the case in the situation of training and education of Directors and professional services professionals. It is notable that the Institute of Directors in Jersey was founded in 1966 and has over 600 members from all sectors of the business community. It plays a significant role in promoting business in Jersey, by promoting free enterprise and setting high standards of corporate governance and financial integrity through professional training programmes.

8.163 The number of cases encompassing integrity failures are not sufficiently significant to suggest the systemic involvement (ranging from unwitting facilitation to acting as witting accomplice) in money laundering by professional intermediaries (third party money laundering). Underlying this assessment is:

- A broad framework to support (including training of) directors.
- Limited evidence of behaviour lacking integrity amongst members of professional bodies, in regulated sectors and amongst bankrupts.
- The relatively low number of financial crime cases.
- No referrals, of any director, by the Viscount to the AG since 2004 (either as a result of an offence under the Bankruptcy (Désastre) (Jersey) Law 1990, nor seeking a disqualification order).
- A general culture of tax compliance.
- Evidence of information sharing from Revenue Jersey to SoJP (via use of Production Orders).
- Evidence of information sharing with overseas law enforcement agencies as envisaged within the OECD's Model Tax Convention.
- Many legal persons and legal arrangements that are not subject to statutory audit requirements are administered by TCSPs who are required to maintain proper records which are subject to compliance monitoring arrangements and oversight by the JFSC.
- Investigators' experience is that when production orders are complied with, the information produced does allow them to 'see the picture' and to 'follow the money'.

However:

- The very low number of directors banned by the Court indicates a failure to take action where there are failures of corporate governance, including tax

compliance. However, the JFSC has issued a number of public statements banning principal persons who held director roles.

- The Taxes Office's ability to undertake risk analysis and target compliance activities to areas at the greatest risk of tax evasion is underdeveloped.
- Revenue Jersey has been severely restricted regarding to whom, and under what circumstances, it may share information, although this has begun to be addressed with the intorduction of the RAL from 2020.
- In recent years, Revenue Jersey has dealt with the majority of cases of non-compliance via civil settlements and not through the criminal Courts.
- There have been no prosecutions of legal persons and legal arrangements for failing to keep proper books of account.
- As noted elsewhere in this report, there is not currently a formal strategy in place for combatting corruption.
- Jersey's tax framework is within a period of transformation of systems and processes.

Module 18: Effectiveness of Tax Enforcement

Assessment: 0.5 Medium

8.164 Revenue Jersey is a non-ministerial department of the States Treasury and Exchequer, broadly reflecting the administrative governance of the UK (HMRC) and the "Westminster/Commonwealth model" (meaning that the Comptroller and Revenue Jersey staff are independent officers enforcing tax laws independently of all others – including Ministers and other civil servants).

8.165 All employees of Revenue Jersey are required to swear an Oath of Office in the Royal Court, obliging them to maintain taxpayer confidentiality and act impartially. All staff are vetted to appropriate levels for their civil-service grade; and are required to make an annual declaration of conflicts of interest. Revenue Jersey is subject to both internal (Government) and external audit on an annual basis.

8.166 A scheme of internal management assurance dictates that regular checks are carried out by senior officers on assessing repayments and write-offs. These checks are, in turn, subject to the annual audit process. The Comptroller and senior managers exercise governance over large and unusual tax assessments including the abandonment of tax investigations.

8.167 Basic training is provided in-house, including coaching, mentoring and checking; with advanced training provided through the funding of external professional tax qualifications. Revenue Jersey routinely seconds people from other tax administrations (mainly UK/HMRC) and secures coaching and training from larger administrations. Strong links exist with HMRC both bilaterally and under the aegis of the British Isles Tax Administrations forum. HMRC routinely provides access to relevant training materials.

8.168 The administration of the ITL, GST and LTT Laws is entrusted by law to the Comptroller of Revenue. The Comptroller's oath of office requires him/her to administer the laws without hatred, favour or partiality and demands complete confidentiality in the performance of his/her duties except for the purposes or in the course of a prosecution of an offence or where specifically permitted by the

law. All employees are required to swear a similar oath. It is an offence for any member of staff to share any information derived in the course of their duties.

8.169 Revenue Jersey is currently undergoing a period of transformation which is reflected in the current assessment. Whilst there are a number of positives including: powers to obtain information; compliance activity; autonomy; and the professionalism of staff, there are also areas requiring improvement. These include: the risk based approach to compliance is not yet sophisticated and targeted (this will become the case post transition); there have been no significant prosecutions since 2010; and the current Law relies too heavily on criminal sanctions, which are generally not being used in favour of a less structured civil penalty approach to encouraging compliance.

8.170 The RAL came into force on 1 January 2020. New legal gateways have been opened with other Government departments and public bodies, enabling information to be shared more easily. For the first time, civil penalties for providing inaccurate information to Revenue Jersey may be levied on individuals and companies (in respect of declarations made on or after 1 January 2020). Draft legislation is currently being prepared to introduce civil information production powers.

8.171 This will open new legal gateways and remove barriers enabling Revenue Jersey to share information more easily. It will also introduce new structured civil penalties on individuals and companies that make incorrect declarations. In addition, amendments to the Income Tax Law (effective from 1 January 2020) introduce new penalties for long overdue returns and statements.

8.172 Revenue Jersey considers there is a general culture of tax compliance. As in all jurisdictions, there is a level of non-compliance arising from error and misunderstanding of tax law, as well as from deliberate avoidance and/or evasion. Revenue Jersey's ability to analyse the risk of tax avoidance and evasion is underdeveloped, which has hindered its targeting of compliance resources to areas of greatest need. This is being addressed as part of the wider transformation exercise currently being undertaken.

8.173 In recent years, the majority of cases of non-compliance have been addressed by civil settlements (including the levying of penalties) and not generally through the criminal Courts.

8.174 In addition, over the same period technical interventions have led to adjustments to the profits on business accounts.

8.175 In 2019, in the case of Jones, the a defendant was sentenced to time served (just over 13 months) and fined GBP 75,000 for evading tax, laundering of undeclared income and being in possession of cannabis. The revenue evaded amounted to GBP 275,558 and the unpaid tax, surcharge and long-term care contribution amounted to GBP 65,826. The court ordered payment of this sum out of previously seized cash. In the 2016 case of Goodwin, the defendant was sentenced to 6 years imprisonment and fined GBP 2,000 for delivering fraudulent tax returns, money laundering and attempting to pervert the course of justice. Prior to this, Revenue Jersey prosecuted 10 cases for fraudulent completion of income tax returns between 1992 and 2010 Prior to this Revenue Jersey prosecuted 10 cases for fraudulent completion of income tax returns

between 1992 & 2010.

8.176 In 2017 a 'non-disclosure opportunity' was held resulting in approximately GBP 8m of income being reported and settlements raised of GBP 1.6m

8.177 Revenue Jersey does not currently publicise details of tax recovered by intervention.

Module 19: Level of formalisation of the economy

Assessment: 0.9 Close to Excellent

8.178 Jersey is an island of 45 square miles with a population density approximately double that of England. On one view, this makes it difficult for inhabitants to carry out 'hidden' economic activity without someone else knowing about it (in particular, the regulatory authorities). Alternatively, it may be viewed that the close communities arising from such a population density facilitate a hidden or informal economy.

8.179 The term "informal economy" refers to paid informal work, that is the paid production and sale of goods and services that are unregistered by, or hidden from, the state for tax, benefit and/or labour law purposes but which are legal in all other respects[51] (i.e. excluding criminal activities, e.g. drug trafficking).

8.180 Jersey's geography permits effective control over its borders and, therefore, scrutiny of people entering and leaving Jersey (and ultimately working within it). Controls over living and working in Jersey, together with its developed financial services industry, support a view of a high degree of formalisation of the Jersey economy.

8.181 In order to live and work in Jersey, various legislative controls exist. The Population Office regulates migration in terms of who is entitled to live and work in Jersey and JCIS controls movements of people to and from the Island including the issuance of visas and entry clearances where required, and the conduct of physical border controls.

8.182 A licence is required before any business may operate in Jersey and, before taking on any employee, a business must ensure the individual has a Government of Jersey registration card (evidencing the person's residential and employment status[52]). Businesses cannot employ anyone without a registration card and, whilst they can employ as many 'Entitled' or 'Entitled for Work' people as necessary (subject to business licence conditions), permission from the Population Office is also required to employ anyone of 'Licensed' or 'Registered' status. To date, there has been one prosecution for operating without a licence and none for failing to request a registration card at the time of employment. However, where cases have been identified of employers failing to request a registration card, these have been "regularised" by the employer and sanctions not applied.

8.183 In 2018 the evidence was given to a States Scrutiny Panel suggesting that a 'black market' is developing in Jersey's hospitality sector with businesses starting to pay staff 'off the books' in an attempt to bypass controls and address "chronic staff and skills shortages". Notwithstanding this, the level of regulation in Jersey is considered to have a positive effect, reducing the size of Jersey's

informal economy.

8.184 Data is not available on the extent to which cash is used in Jersey to pay for goods and services, relative to other payment instruments such as debit and credit cards.

8.185 The use of cash is more prevalent in certain industries including construction, agriculture, hospitality and other lower income services such as cleaning and childcare. However, these industries form a proportionately lower contribution to Jersey's Gross Value Added ("GVA") Nevertheless, Jersey has significant migrant communities, many of whom work in these lower income sectors.

8.186 Unlike in the EU, Jersey lacks a legal framework to ensure that everyone can open a bank account.

8.187 One local clearing bank sees around two cases per month of social exclusion from banking services (due to crimes or language barriers). A report commissioned by the Government of Jersey in 2016, explored the provision of basic accounts, and Community Savings[53] may have an expanded role in future: Whilst Community Savings does not maintain statistical information on those excluded from mainstream banking, they continue to regularly receive applications from individuals who are unable to open an account with a high street bank.

8.188 Jersey has a relatively simple tax regime and lower rates of tax than in many other jurisdictions. On the other hand, the cost of living is high. Around 25% of households/individuals are on low income - GBP 410 per week/GBP 21,320 pa. Accordingly, there is some incentive to "moonlight". Currently, Revenue Jersey[54] does not publicise information on interventions and there has been a lack of regular criminal prosecutions for tax fraud.

8.189 Revenue Jersey does not currently estimate the level of tax evasion. In June 2018, HMRC published a tax gap estimates report which estimates tax lost through a range of behaviours (including errors, evasion, criminality and the hidden economy). The size of the overall tax gap is estimated to be GBP 33bn (5.7% of tax liabilities) of which the hidden economy accounts for GBP 3.2bn (less than 1% of GVA[55]).

8.190 Based on UK data, moonlighting activities are not considered to be significant.

8.191 Whilst, as noted in Module 12, the current cash disclosure regime is considered to be largely adequate, it does not require mandatory declaration or disclosure of cash or similar instruments at the border. Only limited information is held about cross-border transfers (that might help to identify the extent of tax evasion).

8.191 There are, therefore, some gaps in Jersey's information infrastructure which may not fully support transparency of the economy.

8.192 Statistics Jersey, established by the Statistics and Census (Jersey) Law 2018[56],confirmed no studies or reports are available on the extent or size of Jersey's informal economy. However, when asked if it had a sense of what the share might be and, in an informal oral response, has speculated that the share could be around 5% of the economy. Whilst no studies or reports are available on the extent of Jersey's informal economy, the UK may be considered a useful

[53] A local charity which aims to support those in the community who are financially or socially disadvantaged (https://communitysavings.org.je/)

[54] Part of the Treasury and Exchequer Department

[55] 2019 Q1 GVA is GBP 483,649m

[56] https://www.jerseylaw.je/laws/enacted/Pages/L-08-2018.aspx

benchmark.

8.193 In October 2017, HMRC published a survey on the hidden economy in Great Britain. The survey estimated that 4.9% of the British population was involved in the hidden economy (of which an estimated 2.6% had a presumed taxable income) with highest prevalence amongst low income households, 16-24 age range and households with three or more adults. The report further identified that moonlighters were the most common behaviour type (accounting for 57% of the hidden economy). Income earned from the hidden economy was generally low with 83% earning less than GBP 5,000 and 65% earning less than GBP 500.

8.194 In June 2017, a study by the Association of Chartered Certified Accountants estimated that the underground economy in the UK represented 11.5% of GDP in 2016. This is expected to fall slightly in coming years to 10.8% by 2025 – but remains a sizeable portion of the UK economy. The global average is expected to fall from 22.5% to 21.39% of GDP over the same period.

8.195 Given the size of the financial services industry in Jersey (40% GVA[57]), higher salaries (compared to the UK), and factors considered above, the size of Jersey's informal economy is likely to be smaller than in the UK. On balance, it is estimated that circa 5% - 10% of Jersey's GDP could be attributed to the informal economy.

Module 20: Availability of Reliable Identification Infrastructure

Assessment: 0.8 – Very High

8.196 For the purpose of this assessment, identity is taken to encompass who someone is and where they live.

8.197 The Government of Jersey and parochial authorities issue a range of documents suitable for use in the verification of identity. Some of these are photographic (passports, driving licences and firearms certificates). Others are non-photographic (registration cards and tax assessments). There are currently no known problems with falsified government-issued documents in Jersey. JCIS further confirmed that less than 5 forged or counterfeit overseas passports are encountered at Jersey's borders each year, and, in such cases, the holder is typically refused entry.

8.198 In respect of driving licences, there are a small number of circumstances of fraudulent behaviour which are reported to the States of Jersey Police and include: (i) an applicant for a licence making a false declaration that they are resident in Jersey when they are not; and (ii) fraudulent exchanges - where a foreign licence is presented in exchange for a Jersey licence, and, during the validation process, it is identified that the foreign licence is a forgery.

8.199 National identity cards are used in most EU member states and around 100 countries have enacted laws making identity cards compulsory. Some allow "Authorised Persons" (which include banks) to access the national database in order to assist in the application of CDD measures.

8.200 In August 2017, GoJ adopted the use of "Yoti" - a digital identification system. Yoti is, however, limited in its application: it relies upon documentary evidence of identity provided by users and does not itself establish identity. A number of identity verification applications ("Apps") are available and are slowly developing

[57] Statistics Jersey identify in their report 'Measuring Jersey's Economy –GVA and GDP 2017' (published 3 October 2018) that financial services comprise 39.8% of Jersey's GVA (see figure 3, page 3)

prevalence in the local market.

8.201 Notwithstanding the initiatives referred to above, there continues to be much reliance on customers to provide supporting documents to verify an individual's address (utility bills and bank statements - certified where required). Utility bills are the default requirement for almost every Financial Institution/DNFBP when seeking to evidence proof of address.[58]

8.202 Jersey utility companies, certain of which are government-owned, issue bills for utilities provided to a particular address. Given the size of the economy, the number of utility providers is limited and there is strong awareness of the bills' format. It is very easy to forge these documents, and so it is perhaps surprising that their use is so prevalent. Increasingly, utility companies distribute bills electronically which means that there is an increased risk of forgery/falsification.

8.203 As outlined above, significant reliance continues to be placed on documents that are provided by individuals who are customers. Minimal use is made of public information sources, such as CRAs, to verify identity. There are a number of CRAs which could be used to verify identity including Equifax, Experian, Callcredit and Crediva. Whilst CRAs do hold information on Jersey residents, the extent of access to underlying data varies. It is perhaps because of this, that use by Financial Institutions and DNFBPs is limited[59].

8.204 Evidence collected to verify the identity of non-residents (which account for significantly more customer relationships than local individuals) includes the usual identity and address verification documentation (such as passports and utility bills), assessment of public source information and electronic verification screening methods. When utilising traditional verification documentation (utility bills and bank statements) for non-residents, it is unusual to receive original documents. Instead, certified copies of the documents are obtained. For a certified copy to be acceptable, the certifier must meet the requirements of a 'suitable certifier' and provide sufficient contact information in the event of enquiry.

8.205 Guidance provided for in the Handbook suggests that checks should be undertaken on the certifier if he/or she is based in a higher risk jurisdiction. This is typically undertaken through independent internet searches. 'Call-backs' are also undertaken on the certifier when deemed appropriate. However, the 'suitable certifier' need have no experience in spotting forged documentation and Financial Institutions /DNFBP have little, or no, opportunity to spot a forgery when receiving a copy of the documents. Similar issues may be faced where reliance is placed on obliged persons (including group companies).

8.206 Jersey's Companies Registry collects information on companies and partnerships that are created under Jersey Law. Some core information, available on payment of a nominal fee, includes incorporation documents and annual returns (which includes key corporate identifying information and details of registered shareholders at the 1st of January of the relevant year). Information on directors of companies (except public companies), beneficial owners and controllers are not currently publicly available. Only publicly listed companies are required to submit financial statements to the Companies Registry, though such statements may be obtained from the client directly.

8.207 Other publicly available data may be useful in verifying the existence of a Jersey

[58] The Private sector survey reports that 74% of respondents use utility bills to verify residential address, 22% use them quite often, 2% rarely and just 2% never.

[59] 9% of respondents to the Government survey use CRAs, 7% confirmed using Channel Islands CRAs.

legal person or arrangement. Examples include registration under: the Data Protection (Jersey) Law 2018; the Goods and Services Tax (Jersey) Law 2007 and the Goods and Services Tax (ISE) (Jersey) Regulations 2008.

8.208 Registers of companies and partnerships can be used to verify the identity of foreign legal persons and (less common) arrangements. Typically, European registries/financial service regulators disclose most data. For jurisdictions outside Europe data available varies considerably, with certain jurisdictions not disclosing any information at all.

8.209 An international database is also available online for companies involved in international transactions and can be used to verify identity and/or corroborate information[60]. Care must be taken however, as entities with the same name and a different country of incorporation may appear in the lookup list.

Module 21: Availability of Independent Information Sources

Assessment: 0.6 Medium High

8.210 There is limited public information available to assist in determining Jersey-resident customer profiles/ expected transactional activity. However, Jersey has a significant and expanding community working in the provision of risk-screening tools which can be used to develop a customer transaction profile for resident and non-resident customers alike.

8.211 Many Financial Institutions and DNFBPs in Jersey use a range of risk-screening tools ("RSTs"), some of which are locally established and managed. According to the GoJ private sector survey, the most commonly used screening tools are: World-check, Riskscreen, C6, Accuity, RDC and LexisNexis.

8.212 Data held by CRAs may also be used to assess customers' financial status and therefore to determine transaction patterns. Most of the data held by CRAs relates to how an individual has maintained their credit and service/utility accounts. CRAs also access data from other sources including electoral rolls, Court judgments, and bankruptcy and insolvency data. Whilst UK CRAs do hold information on Jersey residents, the extent of access to underlying data may vary and so use is limited.

8.213 Understanding the activity an applicant for business or a customer has undertaken to generate source of funds or wealth is important in developing customer profiles. Limited independent information is available publicly to determine source of funds and source of wealth, and so reliance is placed on the customer. Industry practice to corroborate this information typically includes undertaking open source internet searches, use of screening tools, and obtaining financial statements or other financial data such as bank statements and tax returns.

8.214 As noted in module 20, Jersey's Companies Registry collects and holds information on companies and partnerships that are created under Jersey Law. Data on beneficial ownership and control of legal persons is not currently publicly available, and it might be argued that this data could assist in building a transaction profile.

[60] http://www.lei-lookup.com/#!search

8.215 While the JFSC does publish a list of investment advisors, this in contrast to the position in the UK where the FCA also publishes details of approved persons, authorised representatives and controllers. A list of disqualified directors is not published in Jersey, although the JFSC issues public statements on its website in respect of individuals deemed to be not fit and proper to work in the finance industry.

8.216 Whilst the above reveals there is currently limited data available to the public from the Companies Registry or JFSC, this does not appear to cause an issue to industry.

8.217 Given the majority of business in Jersey is with non-resident customers, Financial Institutions and DNFBPs have developed significant expertise in accessing data sources outside Jersey. However, independent and reliable sources of information to determine transaction patterns may not be available in countries and territories with a less-developed legal and regulatory framework and/or financial service sector.

Module 22: Availability and Access to Beneficial Ownership Information

Assessment: 0.7 High

8.218 Jersey has an established system to ensure that comprehensive information on the structure, management, control, and beneficial ownership ("BOC Information") of corporations, trusts, and similar vehicles is available and can be accessed in a timely manner by competent authorities.

8.219 Jersey also has an established system for ensuring that such BOC Information is available to Financial Institutions and DNFBPs to facilitate their CDD requirements.

8.220 This is primarily achieved by a central register of BOC Information (accessible to competent authorities), combined with a regulated and supervised TCSP sector (the effective supervision of which is rated as "medium").

8.221 Jersey laws allow for the incorporation and/or registration of the following types of legal persons: private companies, public companies, foundations, limited liability partnerships, limited liability companies, separate limited partnerships, incorporated limited partnerships and incorporated associations.

8.222 Trusts, customary law partnerships, as well as limited partnerships are legal arrangements available under Jersey legislation. Jersey trusts law comprises both the Trusts (Jersey) Law 1984, (the "Trusts Law") and the Jersey customary law of trusts.

8.223 A regulated and supervised TCSP is required to form or register most legal persons or legal arrangements. Where legal entities are owned by non-residents, they are required to be incorporated and provided with administration services by a regulated TCSP.

8.224 It should be noted that there is a limited 'carve out' for companies with locally resident shareholders who must present evidence of identity to Jersey's Companies Registry ("the Registry"). This is designed to allow small, local,

trading companies to avoid the expense of involving a professional TCSP.

8.225 All companies were required to update their BOC data by 1 July 2017 as part of the new central register of BOC and are obliged to notify the register of any change within 21 days.

8.226 Each legal person must maintain (at least) a registered office in Jersey and all providers of registered office by way of business (TCSPs) must be licensed and supervised by the JFSC in line with the international standard set by the GIFCS. This includes a "fit and proper" assessment and supervisory programme.

8.227 Under the MLO, all TCSPs (and private trustees) must apply CDD measures, including reviews of records to ensure that documents, data, or information are up to date, relevant and keep records. This includes full information and evidence in relation to BOC Information.

8.228 Article 19(4) of the MLO requires a relevant person to keep records in such a manner that those records can be made available on a timely basis to the JFCU, the FIU a police officer or customs officer (to assist with the analysis of a SAR or for the purposes of an investigation) for the purposes of complying with a requirement under any enactment.

8.229 According to the AML Handbook for Regulated Financial Services Business, and unless otherwise specified, records relating to evidence of identity, other CDD measures, and transactions must be accessible and retrievable within 5 working days (whether kept in Jersey or outside Jersey), or such longer period as agreed with the JFSC. Other records must be accessible and retrievable within 10 working days (whether kept in Jersey or outside Jersey), or such longer period as agreed with the JFSC.

8.230 In addition to the above, since 2017 Basic[61] as well as BOC Information of all legal persons (excluding foundations) has been collected by the Registry and held on a Central Register ("the Register"). Legal persons are obliged to keep such information up to date, with the Registry monitoring data flows and volumes/ activity, as well as obtaining information direct from entities, to ensure that such obligations are being adhered to.

8.231 TCSPs (who undertake this as part of their services) are supervised by the JFSC for compliance with the BOC Information requirements.

8.232 All beneficial ownership information held on the Register is available to domestic and international law enforcement and tax authorities.

8.233 Basic and BOC Information of legal arrangements (not held on the Register) is readily available to domestic and international law enforcement and tax authorities, via the TCSP, Trustee, General Partner or equivalent.

8.234 This equally applies to Basic and BOC Information in relation to foreign legal persons or foreign legal arrangements that are administered by a Jersey TCB. In relation to foreign companies trading in (but not administered in) Jersey, little risk is posed as most such trading companies have UK/EU parents.

8.235 One potential vulnerability in this area is a trustee of a Jersey law trust who is not resident in Jersey. In this case, BOC information is not readily available. However, given such trusts and trustees have no nexus to Jersey, there is no practical way

[61] Information entity name, registered address, proof of incorporation, etc

to assess either the extent of this practise or the potential vulnerability posed by it.

8.236 The JFSC has general powers to access any information and documentation held by TCSPs and those suspected of carrying on unauthorised business. The JFSC may require production of information, the provision of answers and have access to the premises of the supervised person. The tax office may serve notice and Law enforcement may apply for a court order to access any information and documentation held by TCSPs and any non-professional trustee.

8.237 LEAs do not retain statistics on requests for, or access to, BOC Information. However, all confirmed that no issues are experienced in practice, with relevant provision of information.

8.238 BOC Information on legal persons and arrangements held on the Register and/or by TCSPs is not publicly available (unless the beneficial owner is also the registered owner of shares).

8.239 Financial Institutions and DNFBPs have access to all publicly available information held by the Registrar, and to the information on the directors, the registers of members or partners, as the case may be, maintained at the registered offices of the different legal persons referred to above. However, the information contained therein is only Basic Information and not necessarily information on the beneficial owners and controllers of the relevant legal persons

8.240 Therefore, Financial Institutions and DNFBPs do not access BOC Information from a public source to verify CDD information. No specific measures are in place to facilitate access to BOC Information, so as to enable Financial Institutions and DNFBPs to more easily verify customer identification data.

8.241 However, despite the lack of publicly available BOC Information, there are effective alternative methods used to obtain such information. In practice, BOC information is obtained directly from the person/arrangement or from the TCSP administering the person/arrangement.

GoJ Survey Results

8.242 A GoJ survey of the private sector in 2018 revealed:

- 42% felt that adequate, accurate and up-to-date BOC Information of legal persons or legal arrangements was ‘always’ available.
- 44% said that adequate, accurate and up-to-date BOC Information of legal persons or legal arrangements was ‘very often’ available.
- 3 respondents said that BOC Information was ‘rarely available’
- 1 respondent said BOC Information was ‘never’ available.

8.243 The Banking Sector Working Group has also confirmed that, despite there being no publicly available BOC Information (such as a public register), no practical issues are experienced by banks when obtaining or accessing BOC Information in relation to their customers.

8.244 It is acknowledged that the accuracy of BOC Information obtained and held

by TCSPs and other Financial Institutions and DNFBPs is maintained primarily via the AML/CFT obligations imposed upon them. All Financial Institutions and DNFBPs are supervised for compliance with these obligations by the JFSC.

8.245 The TCSP Sector Working Group has considered the effectiveness of supervision of TCBs (including statistics regarding on-site and off-site inspections, findings, sanctions, etc) and has assigned this a rating of 0.7 - High.

8.246 Further, the JFSC's regulation and supervision of TCSPs was evaluated by GIFCS against its Standard in late 2017, resulting in compliant ratings for all areas.

8.247 These two ratings (high from the working group and compliant from GIFCS) have both been considered, along with the generally positive feedback from industry, in coming to the overall assessment of this variable.

Part B – Sectoral risk

SECTION 9

TCSP Sector

Key Findings: The most material activity within the TCSP sector is management services where the trust company business (or an officer thereof) is the director, partner, council member of a foundation or trustee in respect of a client structure.

The overall assessment of the vulnerability of the TCSP sector, having taken into account the characteristics of the sector including the different services provided and the composition of the customer-base, and having assessed the input variables for this sector is: 0.61. This rates the sector as Medium High.

Overview of the TCSP sector

9.1 Jersey has a large and significant TCSP sector, in keeping with its existence as an IFC. In more recent years, there has been a shift in ownership and size (by number of employees) within the TCSP sector. However, it remains an important sector for the Island, employing over five thousand employees directly (as set out in Table 9.1 below) and accounting for estimated assets under management in excess of GBP 713bn as at the end December 2018.

9.2 As at the end of 2017 there were 114[62] TCSPs. There was a decrease in owner managed TCSPs from 98 in 2007 to 58 in 2017 and a sell-off and consolidation of TCSPs owned by law firms primarily to private equity firms or other group owned TCSPs. This trend for consolidation continues creating further large and super large TCSPs.

9.3 Of the total number of TCSPs, 35 were super large (>50 employees), 13 were large (31-50 employees), 24 were medium (11-30 employees) and 42 were small (<10 employees). A shift in the number of mid-sized TCSPs (11-30 employees) was also seen, decreasing from 61 TCSPs in 2007 to 24 TCSPs as at 31 December 2017. Conversely, a shift in profile by size can be seen in the increase in the super large TCSPs, increasing from just 14 in 2007 to 35 as at 31 December 2017. A considerable proportion of customer assets, some 74%, are administered by 35 super-large TCSPs.

9.4 Data from the TCSP sector with regards to the types of customer entities administered by TCSPs in Jersey as at the 31 December 2018.

Table 9.1

Type of Customers administered	Trusts	Jersey Vehicles	Non-Jersey Vehicles	Total
Number	30,164	24,600	10,346	65,110

[62] 21 bank owned, 17 non-bank groups, 5 legal/accountancy firms, 13 with private equity involvement and 58 owner managed

9.5 Jersey has had a central register of beneficial owners for over 20 years. In June 2017, there were changes made to the regime, in line with emerging international standards and best practice to ensure that the Companies Registry maintained an up to date register of beneficial owners and controllers which may be accessible by relevant agencies. In addition, annual returns and filing fees must be submitted by 28 February each year and any change of beneficial owners and controllers submitted to Companies Registry within 21 days.[63]

9.6 Upon incorporation of a Jersey company, Companies Registry will undertake screening of beneficial owners and controllers following a risk based approach, and liaise with the JFSC Supervisor of the TCSP where it has concerns as to the veracity of information submitted to it upon incorporation or those beneficial owners/controllers linked to the customer structure. The companies Registry has published its Registry Processing Statement in this regard.[64]

9.7 TCSPs are regulated under the FS(J) Law for prudential and conduct of business matters and are required to be registered. TCSPS are supervised by the JFSC for compliance with the Jersey AML/CFT regime. A person who is registered as a TCSP under the FS(J) Law may include a natural person, a limited liability company or a limited or unlimited partnership. The vast majority of those holding TCSP licences in Jersey are entities known as Participating Members, who are part of a wider TCSP affiliation.

9.8 There are two specific limited exemptions from registration which are examined in more detail later in this report and those are:

- Private trust company business (or PTC) and private trust company business in respect of foundations; and
- A limited exemption from registration for a natural person, when acting as or fulfilling the function of a director of a company. Such exemption is only available if the individual holds no more than six appointments in or from within Jersey.

Threats in the TCSP sector

TCSPs – ML threat to sector = High

9.9 The TCSP sector has been assessed as high in relation to the ML threat to the sector. From the data collected there were no ML investigations involving the sector and just 1 case where there was an investigation of a predicate offence only. The JFSC recorded 5 cases that were investigated in this sector. There is 1 recorded ML prosecution featuring the sector, and no convictions listed, the JFSC also have recorded 2 cases where sanctions have been taken by them. Data collected by the FIU using a selection of SAR intelligence where there was a typology of potential money laundering, identified 10 cases where there was intelligence suggesting that there was evidence of a predicate offence. LOD statistics indicate that there was 1 prosecution of complex financial crime case. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium/high and the size of the sector and/or its share in the economy is deemed to be high.

63 https://www.jerseyfsc.org/media/1652/guidance-to-completing-boc17-jan2018.pdf
64 https://www.jerseyfsc.org/media/2001/registry-processing-statement-july-2018.pdf

Vulnerabilities in the TCSP sector

Inherent vulnerabilities

9.10 Each of the slices assessed, Trust and company services, PTC Services, Limited Services and other services were risk rated in 9 different areas[65] using the WB risk rating tool. Each of the 9 factors were rated in accordance with the rating criteria available in the tool. The tool itself generated the vulnerability ratings. Where risks identified by the TCSP team did not feature in the WB tool, e.g. ownership of TCSPs and Use of reserved power trusts, these risks were commented on by the TCSP team so that their importance was not lost just because they did not feature explicitly in the risk rating tool.

Ownership of TCSPs

9.11 In terms of risks to the TCSP sector arising from ownership changes and/or mergers of regulated businesses, it is recognised that inherent ML vulnerabilities may increase. Where two existing TCSPs merge, the quality of internal governance and controls may decrease during the transition and integration phases, resulting in an increased risk of ML going undetected. This risk can be increased further should the acquirer fail to conduct adequate due diligence prior to the acquisition or fail to conduct a full review of the client book being acquired post-acquisition.

9.12 Ownership structures involving private equity investment can be complex, with multiple layers of ownership and control structured through the use of private funds. There can be multiple investors holding less than the current 10% threshold definition of a “principal person” as defined under the FS(J) Law. Furthermore, since Private Equity investment time horizons tend to be short, at between 3 to 5 year, there is some concern that the inevitable focus of private equity firms on maximising the returns on their TCSP investments during the investment period may have an adverse impact/influence on a TCSP’s ML/FT risk appetite.

Customer base profile

9.13 As at the 31 December 2018, TCSPs operating in Jersey provided services to some 65,110 customer entities from 179 countries globally, with over 72,000 individual clients and beneficial owners/controllers behind those structures. The top ten jurisdictions and total number of customers and beneficial owners or controllers who have these countries as their principal place of residence are UK, Jersey, USA, Sweden, South Africa, Switzerland, UAE, HKC, Saudi Arabia and Kuwait.

9.14 Some 10% of the customers have been identified as having a relevant connection to a country or territory which has been assessed by reliable and independent third party sources as presenting a higher risk of involvement in Money Laundering or Terrorist Financing (referred to as D2 countries within the AML/CFT Handbook).

[65] 1) Total Size/Volume; 2) Client Base Profile; 3) Professional Secrecy; 4) Use of Agents; 5) Anonymous use of the product within the slice; 6) Difficulty in tracing transactions; 7) Existence of ML typologies within the slice; 8) Use of slice for Tax Evasion/Fraud; 9) Non Face to Face availability of products in the slices

Use of Reserved Powers Trusts

9.15 The reserved power provision may open up the risk of the individual holding the reserved power exploiting this control over the trust assets, and the consequent reduced oversight of the trustee in reviewing the exercise of power arising, in order to facilitate ML/FT. The data collected by the JFSC showed that there were just 5% of trusts serviced in Jersey, where investment powers had been reserved. It is a generally known fact that the vast majority of trust structures established for high net worth Asian families contain reserved power provisions. The absence of reserved powers in other trusts (95%), i.e. fully discretionary sits at the heart of the trust business in Jersey and therefore minimises the overall risk.

Jersey companies versus Non-Jersey companies

9.16 Data shows that 15% of the TCSPs customers are Non-Jersey Companies. There is currently no specific data showing where these Non-Jersey companies are located, or why services are provided to them. It is however the understanding of the Working Group that these are registered in jurisdictions, such as the BVI, IOM, Guernsey, Delaware, Bahamas, Bermuda, Anguilla and Belize. Since 2016, the Working Group believe there to be a reduction in the use of new incorporations of non-Jersey companies. Given the proximity to the UK, and the prevalence of clients and Beneficial Owners and Controllers residing there which account for 34% of total customers in Jersey, there are also a number of UK incorporated companies which are serviced by Jersey-based service providers.

Complex Client Structures

9.17 It is not uncommon to come across structures with a Jersey company serviced by the Jersey TCSP holding investments in overseas trading companies, sometimes with a number of layers of ownership in between. It is recognised that this creates a vulnerability since there may be “distance” between the Jersey holding company and the overseas investment, and it may therefore be difficult for the TCSP to obtain relevant information. The vulnerability is considered by the working group to be lower where such structures are seen in PTC arrangements given the TCSP’s close connection to the family involved and the associated increased accessibility to relevant information.

Bearer Shares

9.18 Where bearer shares are issued, the company is obliged to obtain and maintain shareholder information on those shares, including the name and address of the shareholder. Through the shareholder register it is therefore ensured that legal ownership information is available with respect to any bearer shares. Accordingly, a company would not be allowed to be incorporated if its owner was a foreign company that has issued bearer shares.

9.19 Data collected with regards Non-jersey Companies did indicate that there is a very small number of these which are serviced by Jersey TCSPs where shares have been issued to the bearer. The most recent NRA data, for the period ended 31 December 2018 indicate that only 1 non-Jersey company, out of a total of 9,510 serviced in the Island, has issued bearer shares or warrants.

Cash transactions

9.20 A very small number of TCSPs reported cash transactions having taken place, with 4 TCSPs reporting 36 cash transactions for the period ending the 31 December 2018.

ML/FT risk profile of TCSP customer-base

9.21 Data collected from industry participants with regards to the composition of their customer-bases shows that of the total customers serviced by TCSPs in Jersey, 31% are rated by their TCSPs as presenting a higher risk of Money Laundering, 33% are rated as standard risk, whilst the majority, 35%, are rated as presenting a lower risk of Money Laundering. Neither the MLO, nor the AML/CFT Handbook, require TCSPs to conduct a separate risk rating of the Ultimate Beneficial Owner (UBO)/Controllers of their customer entities. It is understood however that some do. Given that the risk rating of UBO/Controllers is not consistently applied across the TCSP sector, the data collected in this regard is not analysed in any detail within this report.

9.22 It should be noted that there is currently no prescribed manner in which entities should risk rate their customers from an AML/CFT perspective. Given the application of a risk-based approach as defined by the AML/CFT Handbook, there is a possibility that the application of such may be inconsistent between TCSP's. From discussions with members of the working group however, it is not anticipated that there are material differences in the manner in which TCSPs risk rate their customers (and where separately undertaken, UBO/Controllers) for AML/CFT purposes.

Politically Exposed Persons (PEPs)

9.23 Data collected showed that as at the 31 December 2018, 12% of the TCSP customers were either PEPs themselves, or connected with a PEP. The top ten jurisdictions for PEP exposure, and which accounted for almost half of the total PEP population, were: Bahrain, HKC, Jordan, Kuwait, Qatar, Russian Federation, Saudi Arabia, UAE, UK and US.

Customers conducting activities described in the Sound Business Practice Policy (SBPP)[69]

9.24 As at 31 December 2018, 1.5% of TCSP customers were reported carrying on activities that potentially pose a risk to Jersey as an International Finance Centre, these activities are listed in the JFSC's SBPP. The greatest number (0.5%) of customers were reported as undertaking activity 7, which relates to the involvement, directly or indirectly, in mining, drilling or quarrying for natural resources across the world.

9.25 The exploitation of natural resources is synonymous with Bribery and Corruption and therefore there is an increased risk of those companies undertaking activity in this area, particularly in countries perceived as having higher levels of public sector corruption, being involved in such criminal activity. Such risk is also increased where the TCSP is not engaged in the direct management of the assets of its underlying client structure.

Sovereign Wealth Funds, the risk of corruption and higher risk jurisdictions

9.26 The supervisory activity of the JFSC has highlighted scenarios where TCSPs have provided services to state-owned investment structures. These have ranged from pension investments for North American states, private equity investments in respect of London real estate ventures for Middle Eastern sovereignties, to managing the assets on behalf of some of the poorest African nations provided with supranational funding. The difficulty in the various scenarios is the application of the risk-based approach and the three-tier test in order to identify the controllers in the context of the governing body of the beneficial owner i.e. the state. Often, these organisations can be quite unique in their constitution and officers may change or it may be difficult for the TCSP to keep up to date with changes where an intermediary is used.

TCSPs providing services to Aggressive Tax Schemes

9.27 Jersey has stated publicly that it has no wish, or need, to engage with those who seek to involve the Island in abusive tax planning schemes to avoid tax, with a particular focus on those originating in the UK. Anecdotal evidence from a number of TCSPs suggests that the appetite for exposure to such schemes, and indeed their prevalence, has diminished significantly over recent years.

Use of trust and company structures to avoid tax

9.28 There is a risk that TCSPs may not have had sight of tax advice in respect of client structures at the point of taking the business on. There is also the risk that the tax position at the stage that the TCSP engaged with its client may have changed. There is no regulatory requirement for Jersey TCSPs to seek copies of tax advice for their clientele, however the JFSC's expectations in this regard is that best practice, in order to ensure that TCSPs can demonstrate adequate knowledge and understanding of the rationale for tax driven structures, is for TCSPs to seek copies of their clients' tax advice.

Other potential vulnerabilities

9.29 TCSPs are expected to fully understand the rationale for the establishment of client structures. Failure to fully understand and document said rationale exposes the TCSP to the risk that it does not adequately monitor the activities of its client and may therefore fail to identify activity which may ordinarily give rise to a suspicion of criminal activity.

9.30 There is also a risk that due to pressures associated with income generation, certain TCSPs may become over dependent on particularly significant fee generating clients and may, as a result, acquiesce in the directions and wishes of such clients rather than upset them and put their fee income at risk. In discussion with the working group it was felt that such risk should be mitigated by TCSPs having robust risk management frameworks and oversight of concentration risk.

TCSP Sector Slices

9.31 ML vulnerabilities were assessed in terms of the provision of services in four principal areas:

(a) Trust and Company services or Management Services - where the trust company business (or an officer thereof) is the director, partner, council member of a foundation or trustee in respect of a client structure.

(b) Services provided to Private Trust Companies - The Working Group felt that there was merit in discussing Private Trust Companies, which are exempt from registration, and the services provided to them by regulated TCSPs, in further detail within this report. The TCSP work did include analysis of the PTC space, included later in this chapter.

(c) Limited Services - including registered office and accommodation, correspondence or administrative address.

(d) Other services provided – An assessment of other ancillary services in respect of which data has been collected.

9.32 The inherent vulnerability of these services, and final vulnerability scores arising once the various control variables were derived using the WB Risk Model tool. The risk rating exercise was undertaken by each TCSP working group team members, which were then averaged to produce scores/ratings which were used in the model. The team completed the exercise twice, August 2019, and then following the World Bank workshop, which took place in November 2019. The scores/ratings used are those produced following the workshop, and the output from the risk tool (which did not differ materially from the previous rating exercise in August) produced the following results:

Table 9.2

Service Type	Vulnerability	Rating	Score
Trust & Company Services	Inherent vulnerability	Medium High	0.75
	Final Vulnerability	Medium High	0.61
Private Trust Company Services	Inherent vulnerability	Medium High	0.63
	Final Vulnerability	Medium	0.54
Limited Services	Inherent vulnerability	Medium High	0.63
	Final Vulnerability	Medium	0.54
Other Services	Inherent vulnerability	Medium	0.55
	Final Vulnerability	Medium	0.49

9.33 The overall assessment of ML vulnerability for the TCSP sector is: 0.61 which is Medium High.

9.34 A breakdown was sought across all TCSP Sector slices as to the types of activities provided by TCSPs to their customers. Data collected for the period ended the 31 December 2018 shows the split of services as being:

[67] https://www.jerseyfsc.org/media/2111/20180802-ps-sound-business-practice-policy.pdf

Table 9.3

Activities of the TCSP	Trusts	Jersey Companies	Non-Jersey Companies	Other - Jersey	Other - non-Jersey	Total
Number where management services are provided	27,695	14,893	8,778	1,009	194	52,569
Limited Services only		6,394	526	160	78	7,158
Registered Office only		1,485		237		1,722
Director Service only		601	503			1,104
Trustee service only	7,158					7,158
Partner service only				5	7	12
Council member service only				12	4	16
Nominee service only	181	44	19			244
Accommodation, correspondence or administrative services only	26	18	17	35	14	110
"hold mail" service	2	13	6	0	0	21
TOTAL	35,062	23,448	9,849	1,458	297	70,114

9.35 The above data shows that whilst a number of different combinations of services are provided by TCSPs to their clients, by far the majority of the activity undertaken is in respect of Management Services.

9.36 It is noted that there are differences in the number of customers to whom activities / services are provided with the data collected showing a total of 70,114, compared to the total number of customers declared as 65,110. The assumption is that there may be an element of double counting by TCSPs, as well as the potential for there to be more than one TCSP providing services to a particular customer structure. One such example could be the provision of trustee services to a trust by one TCSP and director services to an underlying company or companies of the trust provided by one or more other TCSPs.

Trust and Company Services where management services are provided ("Management Services")

9.37 The assessment of the inherent vulnerability variables for the provision of management services is set out in the below table:

Table 9.4

Product Specific Input Variable	Rating
Total Size/Volume	High
Client Base Profile	High
Professional Secrecy/Client Privilege	Light
Use of Agents	Medium Low
Anonymous Use of Product	Not Available
Difficulty in tracing the transaction records of the product	Easy to Trace
Existence of ML typologies on the abuse of the product	Exist
Use of product in fraud or tax evasion schemes	Exist
Non face to face use of the product	Available

9.38 The TCSP sector in itself is sizeable, with some 65,110 underlying customers for which TCSPs have reported asset values of an estimated GBP 713bn. This client base is predominantly made up of customers who are not resident in Jersey, and as such by its very nature is considered high risk.

9.39 As discussed previously, the majority of customers receiving services from Jersey TCSPs, some 80%, receive management services incorporating trust services, company services, or a combination of both.

9.40 Whilst TCSPs do provide nominee services to their clients, and the register of beneficial owners and controllers is not currently publicly available, the anonymous use of this product has been rated as not available as TCSPs have to adhere to the KYC requirements of the AML/CFT Framework, and the JFSC as Supervisor for AML purposes and Registrar of companies, has full access to details of ownership and control of Jersey registered companies both at the point of incorporation and on an ongoing basis thereafter

9.41 At this stage there is no register of company directors, however at the time of publication the States Assembly had approved primary law introducing a register of Directors, and this information will be publicly available in the future.

9.42 Given its status as an IFC, the use of agents for the purposes of introducing new business to Jersey TCSPs is common-place, with the majority of introducers being located in the United Kingdom. It is the understanding of the Working Group however that in the main, TCSPs will manage their client relationships locally and will tend to meet with their clients on a face to face basis, and this is seen as a value added part of the service for their clients. There may be occasions where, due to cultural reasons, it may not be possible to deal directly with the ultimate customer. The working group stated that this was common when dealing with clients from the Middle East and some UHNW customers that often utilise either gatekeepers or a family office to deal with matters relating to their wealth. In these circumstances TCSPs will tend to have regular contact, including face to face, with the customers' trusted advisors and will look to undertake CDD checks on these individuals as well as the ultimate customer so as to mitigate both AML/CFT and commercial risks.

9.43 Some businesses who form part of larger regulated groups, such as Bank-owned TCSPs, may depend upon the services of staff from group companies to interact directly with clients. Client on-boarding may be centralised in a group company based in another jurisdiction which may be unfamiliar with the Jersey CDD requirements and operate to a lower standard, however the working group concluded that this vulnerability will be reduced via the application of the JFSC's Outsourcing Policy by TCSPs which mitigates the risks in a number of ways.

9.44 The vulnerability associated with non-face to face relationships will be greatest where a TCSP: (i) has relied on a third party to apply CDD; (ii) deals with its customers through an intermediary; and (iii) that intermediary is unfamiliar with the TCSP's policies and procedures and the AML/CFT requirements applicable in Jersey.

9.45 The provisions of the AML/CFT framework allow certain reliance to be placed on third parties in respect of the identification of beneficial owners and controllers of underlying customer structures. Whilst there is a certain level of reliance being placed under strict conditions as outlined in the AML/CFT framework, feedback from members of the working party and the wider industry would suggest that

Jersey providers tend to satisfy identification and verification requirements themselves rather than relying on third parties.

9.46 The ease with which customer transaction records can be traced has been assessed as Easy to Trace. Given the record keeping requirements that TCSPs are subject to, as well as the on-going obligations imposed upon them by the AML/CFT framework, including ongoing transaction monitoring, it is the view of the working group that details of customer transactions via the structures administered by local TCSPs are easy to trace. In addition, the involvement of Jersey banking service providers adds a further element of transactional scrutiny and record keeping.

9.47 It is acknowledged by the working group that some complex structures may make it more difficult to obtain information relating to transactions occurring elsewhere within a client structure, however it was not felt that this was a widespread issue across the TCSP sector.

9.48 Over recent years, certain aggressive tax avoidance schemes promoted by UK-based tax advisers have been the subject of some considerable adverse media coverage. A number of Jersey TCSPs have had exposure to these schemes.

9.49 The provision of management services involves an increased fiduciary responsibility on behalf of the TCSPs and their employees. In addition, those holding TCSP licences in Jersey are required, under the Trust Company Business Code of Practice, to adhere to certain standards relating to the manner in which they conduct their business, including compliance with relevant statutory obligations such as those relating to AML/CFT.

9.50 As part of the NRA data collection exercise, data was sought with regards to the number of companies serviced by Jersey TCSPs where there is a mixed board[68]. Data shows 22% (of Jersey and Non-Jersey combined) have mixed boards.

9.51 The assigned rating for Trust and Company Services where management services are provided is 0.61 - Medium High

Services provided to Private Trust Companies (PTCs) and PTCs in respect of foundations

9.52 The vulnerability variables, allocated ratings and factors considered in deriving those ratings respect of PTCs were as follows:

Table 9.5

Product Specific Input Variable	Rating
Total Size/Volume	Medium
Client Base Profile	High
Professional Secrecy/Client Privilege	Light
Use of Agents	Medium Low
Anonymous Use of Product	Not Available
Difficulty in tracing the transaction records of the product	Easy to trace
Existence of ML typologies on the abuse of the product	Exist but Limited
Use of product in fraud or tax evasion schemes	Exist
Non face to face use of the product	Available

[68] A mixed board means that the underlying client or their representatives may sit on the board and therefore exert influence over the affairs of the company, thereby increasing the ML risk. However, it is expected that any representatives of the TCSP appointed to the board will closely monitor the involvement of non-TCSP directors.

9.53 Certain activities are exempt from registration under the FS(J) Law. Two specific exemptions for private trust company business and private trust company business in respect of foundations exist. A PTC or a PTC in respect of foundations, may be a Jersey company or a body corporate located anywhere in the world and it must be administered by a TCSP regulated under the FS(J) Law. The administration services may range from that of a full suite of the regulated services or limited to one or two services, described as "Limited Services" or any combination of services.

9.54 PTCs are predominantly used as a framework for a family office style structure that is administered on behalf of an ultra-high-net-worth family by a TCSP. Equally, PTCs can operate alongside a family office and compliment it with services such as IFC structuring and family governance that the family office is not expert in. An additional use of the PTC is to act as the corporate trustee to a Jersey Property Unit Trust (or JPUT), commonly used to acquire and hold interests in UK real estate[69]. Historically, PTCs have been incorporated to act as trustee to an employee share trust for a specific employer. The working group was of the view that the demand for PTCs to act as trustee to employment benefit trusts has reduced considerably, and where such trusts continue there has been a move to replace PTCs with regulated corporate trustees.

9.55 Data collected by the JFSC as at 31 December 2017 reported that there were approximately 950 PTCs, the vast majority of which are Jersey incorporated. It is noted that administration for the majority of PTCs is concentrated in four of the super large TCSPs. Whilst the data does not currently indicate the purpose for the use of the PTC being either succession planning or to act as trustee of a JPUT, underlying information available to the JFSC would indicate that a significant proportion of PTCs under administration by the larger TCSPs relate to the JPUT sector.

9.56 The statistics indicate that smaller firms offer services in respect of PTCs and/or JPUTs to a smaller proportion of the market (current figures do not distinguish the split). Notwithstanding the split of service type, it would appear that level of services are commensurate with size of TCSP and hence relative to resources it has and supervisory approach.

9.57 In the overall context of TCSP services provided for the sector, provision of services to Trust, Companies and other structures through a PTC accounts for less than 2% of structures serviced in Jersey.

9.58 For a legal person that is a PTC, Schedule 2 of the Proceeds of Crime Law provides hat a PTC, the administration for which is carried out by a TCSP, is not subject to the MLO and is not required to register with the JFSC – the TCSP that administers the PTC is required to provide details of the those that it administers. The basis for this concession is that CDD measures will be applied by the TCSP to the specific trust or trusts that are serviced by the PTC in line with Article 13 of the MLO, on the assumption that (as a minimum) the TCSP will provide the PTC with a correspondence or administrative address in line with its licensed activities provided for following registration under the FS(J) Law). Essentially, as such, the TCSP is to consider the PTC to be its customer and each of the trusts to be third parties, again under which identification measures follow under Article 13 of the MLO.

9.59 A heightened risk of money laundering may occur where the administration of the PTC by the TCSP is defined as "Limited Services".

[69] The features and benefits of a JPUT may be readily found on open source websites, most notably they include: (i) Units in a trust which may be readily transferable; and (ii) there may be UK tax benefits or UK taxes avoided on the transfer of units in the trust (this is subject to change).

9.60 The use of a split board may increase the risk of money laundering where the main nexus of the board does not exercise sufficient oversight over the management of the underlying assets of the trust or trusts or foundations. By the same token, governance of the PTC may be improved by the addition of independent professionals to the board. Further assistance and support may be provided by a TCSP where effective monitoring and controls exist as well as the ability of the board to call upon the knowledge and expertise of the Compliance function of the TCSP. There are fiduciary duties and enhanced governance of the PTC and underlying trusts under Jersey's Companies law and Trust law.

9.61 The TCSP NRA working group discussed the possibility that some TCSP's may10. be providing registered office only services to PTCs, or some form of lighter touch administration. They concluded that although it had not experienced this in practice and therefore did not anticipate this as being a widespread issue, this could not be categorically ruled out. It was therefore agreed that if this were the case, then a reduction in the involvement of, and consequential oversight by, the TCSP would pose a greater risk to the Island.

9.62 In summary, the TCSP NRA working group concluded that PTCs pose a higher inherent risk in terms of AML than other aspects of the TCSP sector, and the value of the underlying assets, means they are worthy of separate consideration as part of the NRA process.

9.63 The assigned rating for Services provided to Private Trust Companies (PTCs) and PTCs in respect of foundations is 0.54 Medium.

Limited services

9.64 Limited services refers to a situation where a TCSP provides only:

- Registered office services; or
- Secretarial services, or a combination of the two (hereinafter referred to as "limited services") to a customer entity.

9.65 It should be highlighted that many of those TCSPs providing Management Services, as discussed in above, also provide limited services and therefore such services will be covered by many of the same internal systems and controls.

9.66 The TCSP NRA Working Group considered the following vulnerabilities and derived ratings for each:

Table 9.6

Product Specific Input Variable	Rating
Total Size/Volume	Medium
Client Base Profile	High
Professional Secrecy/Client Privilege	Light
Use of Agents	Medium Low
Anonymous Use of Product	Available
Difficulty in tracing the transaction records of the product	Difficult/Time Consuming
Existence of ML typologies on the abuse of the product	Exist but Limited
Use of product in fraud or tax evasion schemes	Exist
Non face to face use of the product	Available and Prominent

9.67 Limited services accounts for approximately 10% of the services provided. Whilst data is not held as to the levels of income generated as a result of the provision of limited services, the TCSP NRA working group was of the view that it only accounts for a low percentage of overall TCSP income.

9.68 Specific features and characteristics for registered office only relate only to Jersey companies, the board of which may be located on-island or directors may be located in another jurisdiction. Beneficial owners may also act as directors and ownership may be held by way of a nominee arrangement. Currently, there is no public register of ultimate beneficial ownership where nominees are used and there is no public register of directors. However, at the time of publication the States Assembly had approved primary law introducing such a register of Directors and secondary legislation was pending debate to introduce a method to increase transparency regarding nominees. The Companies Registry does however hold information regarding ultimate beneficial ownership and directors of Jersey Companies, and this information is therefore available to the JFSC as supervisor and registrar and other relevant authorities.

9.69 There is an inherent risk that a Jersey company is used to hold assets which may be proceeds of crime and this risk can increase where a regulated TCSP does not provide management services due to the reliance on the customer to provide information/confirmation in respect of the activities of the company. The possible remote location of the activities of the company including its banking facilities, use of signatories and other delegated powers on behalf of the company and delayed timing of the oversight of transactions by the TCSP of the company all point to a higher likelihood or impact of the inherent risks associated with money laundering.

9.70 The AML legal framework provides TCSPs with specific guidance in the case where a regulated TCSP in Jersey provides limited services.

9.71 It is noted from supervisory activity undertaken by the JFSC that a number of TCSPs have “de-risked” by ceasing the provision of limited services. This has been achieved by converting existing legacy customer activities to full management services, exiting the customer entirely by way of a summary winding-up of the company, or transferring services to another TCSP on island willing to provide limited services. The JFSC is aware of those TCSPs willing to provide limited services and takes this into account when completing its entity risk assessments and allocating its supervision resources, including identifying persons to be subjected to a thematic examination.

9.72 Given the JFSC’s long standing policy of treating limited and registered office only services as high risk, additional specific controls regarding the provision of limited services by regulated TCSPs exist. Such controls include the requirement to fully understand the rationale for the service being provided, record keeping, compliance with the relevant laws, including the Companies Law and any relevant laws in any jurisdiction, by officers of the company.

9.73 Data for the period ended 31 December 2018 tells us that there are 7,158 customer entities where limited services are provided, and 1,722 instances where registered office only or a combination of registered office and company secretarial services are provided. In the context of a total of 65,110 Jersey customer entities and taking into account that TCSPs have ongoing regulatory requirements to understand and oversee the activities of their customer when providing limited services, this is not seen as representing a significant risk.

9.74 It is not a surprise, however, to see some evidence of Limited services on the Island owing to legacy structuring issues and also because of the work that is, from time to time, provided to overseas corporate trading entities who wish to benefit from accessing Jersey's expertise in corporate governance and company secretarial services. Unfortunately, it is not possible to say what proportion of Limited services is for private customers versus corporate. If a company is tax resident in another jurisdiction and the TCSP has complied with its AML obligations then Limited services should not always be a cause for concern so long as the customer relationship is a good one, with a steady flow of information. The challenge of course is separating the good from the bad and therefore on balance the TCSP NRA working group do see the need for these relationships to continue to be treated as higher risk and would expect the tolerances for each individual TCSP to be quite low.

9.75 In conclusion, the assigned rating for Limited services is 0.54 Medium.

Other services provided

9.76 There are a number of "other" services provided by TCSPs in Jersey, which are considered to be ancillary to the main activities undertaken within the sector. Whilst the categories of these services are so varied, the TCSP NRA working group has given consideration to the vulnerabilities arising as a result of these services and rated them as follows:

Table 9.7

Product Specific Input Variable	Rating
Total Size/Volume	Medium Low
Client Base Profile	High
Professional Secrecy/Client Privilege	Light
Use of Agents	Medium
Anonymous Use of Product	Available
Difficulty in tracing the transaction records of the product	Difficult/Time Consuming
Existence of ML typologies on the abuse of the product	Exist but Limited
Use of product in fraud or tax evasion schemes	Exist but Limited
Non face to face use of the product	Available

Director only services

9.77 The data for the period ended the 31 December 2018 shows that Director only services (not management services) equates to circa 1.5% of the overall activity in the TCSP sector. The NRA TCSP working group discussed the fact that where director only services are being provided, and the TCSP does not comprise the majority of the board, then this does present a vulnerability. It was however agreed that in the event that the director was excluded from discussions or information was not forthcoming, this would be seen as a red flag and would prompt further action, such as the filing of a SAR, to be taken.

Trustee only services

9.78 The data collected indicates that there are 7,158 trusts which are receiving

trustee only services. This compares to the total figure of 30,164 trusts, including via PTCs, where wider TCSP services are provided in Jersey. The data collected clearly shows that the majority of services relating to trust clients involve management services. Where only trustee services are provided, and whilst there has been no specific data collected by the JFSC in this regard, it is the NRA TCSP working group's understanding that it is common place for trustee only services to be provided where the underlying trust assets are managed by another third party, who may or may not be a Jersey TCSP, or as alluded to previously there may be situations whereby two or more trustees act as trustee for the same trust in Jersey. Such appointments are very much driven by the individual needs of the trust beneficiaries.

Partner only services

9.79 Less than 0.1% of services provided by TCSPs in Jersey relate to the provision of partner only services. It has therefore been decided that provision of these services does not merit further analysis at this stage.

Council member only services

9.80 Less than 0.1% of services provided by TCSPs in Jersey relate to the provision council member services. Indeed, data provided by the Companies Registry notes that since the introduction of the Foundations Law, compared to the incorporation of Jersey companies, the use of Jersey Law Foundations remains in its infancy. Therefore, no separate sector assessment has been made in respect of Foundations.

Nominee only services

9.81 It is the perception internationally that one of the only reasons for customers to use an offshore jurisdiction is to preserve anonymity through the use of nominee and shell companies, and thereby disguise the proceeds of crime. The data collected by the JFSC shows that the provision of nominee only services forms less than 0.1% of the services provided by TCSPs in Jersey. Given that the use of nominee only services is not prevalent across the Jersey TCSP customer base, no separate assessment has been made of such services in this report. Nominee services provided by TCSPs are very much seen as ancillary to wider services provided which fall within the suite of full management services and which are all subject to the requirement for TCSPs to act in compliance with the AML/CFT framework.

Hold mail services

9.82 The data collected by the JFSC indicates that the provision of "hold mail" services accounts for less than 0.1% of the services provided in the Island. As such, no separate assessment has been made of such services in this report. Notwithstanding the specific requirements relating to hold mail services, TCSPs conducting any form of regulated activity have to ensure that they have robust systems and controls in place to ensure that they comply with their obligations under the AML/CFT framework.

Services provided by Natural Persons carrying on a single class of Trust Company Business

9.83 The regulatory framework for trust company business includes some classes of business, which may be provided by a natural person e.g. acting as director, company secretary, trustee or nominee shareholder, although the latter is only possible in exceptional circumstances. All such persons intending to undertake such activity are required to go through a full application process, including fitness and propriety checks. If an application is successful, and depending on the class of business being applied for, certain conditions are attached to the authorisation as follows:

Table 9.8

CLASS	SERVICE PROVIDED	DETAILS AND CONDITIONS:
Class G	Director	The JFSC records show that as at the 31 July 2019 there were some 78 individual Class G registrations. Conditions attached to a Class G licence for a natural person are: • the individual may not act as a sole director without the prior consent of the JFSC; • the individual may not act as a sole director without the prior consent of the JFSC; • the individual must have and maintain unencumbered assets of GBP 25,000; • the individual should consider whether they have insurance cover (Directors and Officers/Professional Indemnity Insurance) which is adequate and commensurate with their activities; • the individual must meet the Category A Trust Company Business Employee standard of qualification, years of experience and continuing professional development as set out in the Trust Company Business Code of Practice.
Class I	Company Secretary/ Secretary to a Limited Liability Partnership	JFSC records show that as at the 31 July 2019 there were only two natural persons holding a Class I licence
Class L	Trustee	The JFSC's records show that as at the 31 July 2019 there were four individuals holding Class L licences in comparison to the total active Class L licences in issue being 423. It is however not known how many co-trusteeships these individuals have. In terms of AML control vulnerabilities, it is recognised that due to the significant restriction of activities imposed by the licencing requirements in order to become trustee, the inherent risk of ML associated specifically with TCSP services provided by individuals is reduced, and as a result no separate assessment of these services has been made in this report.
Class M	Nominee Shareholder	It is the JFSC's policy that in general individual persons are not granted licences to act in the capacity of nominee shareholder, and as at the 31 July 2019 there were no Class M licences held by individuals.

Key Exemptions

Exemption for individuals from the requirement to register for a Class G - Director

9.84 Given the broad definition of Trust Company Business set out under the FS(J) L, and in recognition of the fact that individuals acting outside the confines of a trust company business, were also involved in the provision of directorship and to a lesser extent trusteeship services, a number of exemptions were introduced to avoid certain directors being inadvertently caught by the requirement to register, including the "de Minimis" exemption.

9.85 The "de Minimis" exemption was introduced with effect in February 2011, and permits an individual to hold up to 6 directorships (in addition to any that would otherwise be exempt) without triggering the need to register under the Law. With regards to the de Minimis exemption, the JFSC is currently unaware of how many individuals are availing themselves of this exemption. Given the considerable powers that can be exercised by directors, this in itself gives rise to a vulnerability. The vulnerability associated with the de Minimis limit is seen to be mitigated where other directors on the board are regulated and supervised by the JFSC.

Experienced Personal Advisers – EPAs

9.86 A number of "experienced personal advisers" were "grandfathered" in as part of the introduction of the regulatory regime for TCSPs in 2000. These EPAs are exempt from registration for the provision of trustee and director services for existing relationships that were in place prior to the 11 December 2000 on the proviso that no new services to such relationships be provided without the prior approval of the JFSC. As at the 31 July 2019 JFSC records showed 19 EPAs as still being active in the TCSP sector. Given the local nexus of EPAs and the legacy nature of activity undertaken, it is not perceived that the risk of ML related activity is high.

9.87 The assigned rating for other services is 0.49 - Medium

9.88 AML Control Vulnerability Variables

Table 9.9

Control Vulnerabilities Variables	Assessment Rating of the TCSP Sector	TCSP Score
1. Comprehensiveness of AML Legal Framework	Very High	0.8
2. Effectiveness of Supervision Procedures and Practices	High	0.7
3.Availability and Enforcement of Administrative Sanctions	Medium High	0.6
4. Availability and Enforcement of Criminal Sanctions	Medium	0.5
5. Availability and Effectiveness of Entry Controls	Very High	0.8
6. Integrity of Staff in TCSP Firms	High	0.7
7. AML Knowledge of TCSP Firms' Staff	Medium High	0.6

Control Vulnerabilities Variables	Assessment Rating of the TCSP Sector	TCSP Score
8. Effectiveness of Compliance Systems	Medium High	0.6
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium High	0.6
10. Level of Market Pressure to Meet AML Standards		
11. Availability and Access to Beneficial Ownership Information	Medium High	0.7
12. Availability of Reliable Identification Infrastructure	Medium High	0.6
13. Availability of Independent Information Sources	Medium High	0.6

Comprehensiveness of AML legal framework

9.89 Control vulnerabilities of the AML legal framework of the Jersey Primary legislation, specifically the FS(J) Law, Supervisory Bodies Law have been set out under the AML legal framework variable.

Assigned rating score is 0.8 Very High

The rationale for this rating is based on the existence of a comprehensive framework. Some weaknesses in the application of the risk-based approach are taken into account in the sections considering the enforcement of administrative and criminal sanctions variable.

Effectiveness of supervision/oversight activities

9.90 Assigned rating is 0.7 High.

9.91 The JFSC has undertaken a significant change program in recent years, in part based on the review of major enforcement cases, to further develop its risk-based approach to the supervision of the regulated financial services sector, including TCSP. This revised approach means that the majority of TCSPs have a single supervisor who has oversight of the entity for all of the regulated activities that it undertakes[70].

9.92 In 2019, 14 entity supervisors working within the 2 Relationship Managed Supervision Units were responsible for the oversight of entities holding TCSP registrations who had been allocated an Enhanced or Proactive approach to supervision.

9.93 The revised supervisory model, combined with the increased amount of supervisory information being collected on an annual basis, has increased the ability of the JFSC to identify areas of risk where increased direct supervision would be advisable.

Availability and enforcement of administrative and criminal sanctions

9.94 For the purposes of the TCSP sector, the TCSP NRA working group has assigned ratings of 0.6 Medium High for administrative sanctions and 0.5 Medium for criminal sanctions.

9.95 On the 17 July 2019, the JFSC issued its first civil penalty against a regulated

[70] Predicate Offences are crimes underlying money laundering or terrorist finance activity, e.g. fraud, corruption and tax evasion.

business for an historic contravention of the JFSC's Codes of Practice for Trust Company Business and Fund Services Business. Whilst this was the first civil penalty levied by the JFSC, it has issued notifications to 10 entities, including 5 TCSPs, to the extent that any repetition of issues of concern identified, or the failure to adequately remediate concerns identified may result in a civil penalty being levied. The use of Public Statements[73] has been used effectively together with the Power of Direction to restrict or prevent the employment of Principal Persons or Key Persons sanctioned by the JFSC following regulatory action or investigation pursuant to the FS(J) Law and/or Supervisory Bodies Law. The restriction of employment coupled with the issue of a Public Statement naming the individual is known to provide sufficient "moral suasion" within the finance sector on the Island.

Availability and effectiveness of entry controls

9.96 Assigned rating - 0.8 Very High

9.97 Jersey has a comprehensive legal and regulatory framework for the Authorisation, and then subsequent supervision of, entities conducting regulated activities. All applications are dealt with by a Central Authorisations Unit within the Supervision division of the JFSC.

Integrity of Business/Profession staff

9.98 Assigned rating - 0.7 High

9.99 It is the general perception that professionals within the TCSP act with integrity. It is noted that there are examples of behavioural failings, as illustrated in several public statements and civil court rulings or settlements.

9.100 The December 2017 Sectoral Summary of the Statistics Jersey Survey shows the TCSP Headcount to be circa 6,000. All customer facing employees in this sector are subject to the Trust Company Business Code of Practice which requires that they are fit and proper for their roles and hold relevant qualifications. There are a number of historical cases, and corresponding sanctions, which have resulted in findings which may be indicative of a lack of integrity in individuals working within the TCSP sector.

9.101 The TCSP sector does have certain vulnerabilities which tend to arise out of the following:

- a failure within individual businesses to adopt the correct conduct culture from the top;
- business interests being put ahead of risk and compliance;
- risk arising out of a shortage of qualified and experienced compliance staff;
- failure to adhere to good corporate governance including effective span of control and a truly independent compliance function;
- rogue employees who have too much control and influence.

[73] Section 14.2.2 of the Funds Section of the AML/CFT Handbook.

AML knowledge of entity staff

9.102 Assigned rating - 0.6 Medium High

9.103 Overall AML knowledge within the TCSP sector is regarded as high. It is noted that there are certain areas of improvement, such as a fuller understanding of the three-tier test, the application of source of wealth versus source of funds and a fuller understanding of AML/CFT risk at the customer on-boarding stage.

Effectiveness of compliance functions (entity)

9.104 Assigned rating - 0.6 Medium High

9.105 In 2019, there were 145 individuals acting as either MLCO, MLRO or both for persons with a TCSP registration. These individuals also hold Key Person positions for Participating Members of these entities. Supervisory risk data identifies that 10% of the TCSP workforce are dedicated to compliance activities. An analysis of the years of relevant compliance experience held by the current incumbent MLCO and MLROs shows that 76% of the incumbent Key Persons have in excess of 5 years relevant compliance experience.

9.106 The JFSC's stringent vetting process is designed to ensure that those individuals seeking no objections to become Key Persons are sufficiently fit and proper to perform the roles. Most compliance functions are resourced by individuals with relevant professional qualifications and considerable experience of performing compliance related roles.

9.107 It is acknowledged that AML/CFT failings are regularly identified as part of the JFSC's oversight of the TCSP sector, and as a result the effectiveness of some compliance functions can be called into question. Whilst there may be considerable AML/CFT findings, the number of actual Money Laundering cases are low.

9.108 As the data provided shows, the majority of TCSPs are conducting regular monitoring of customer activity via both automated and manual means. Data relating to the freezing of sanctions related assets demonstrates that there is monitoring undertaken by TCSPs and it has resulted in funds being withheld.

9.109 There is also evidence that in spite of issues relating to AML/CFT being identified, the use of reporting professionals and regulatory consultants by entities, in addition to frequent meetings with, and intensified oversight by, the JFSC can have a positive influence on the effectiveness of the compliance functions of TCSPs.

9.110 The JFSC enjoys an open and honest relationship with the majority of Key Persons and compliance functions. Feedback received from industry participants in the TCSP NRA working group states that where regulated sectors may once have avoided communication with the JFSC for fear of matters being raised resulting in censure, licence holders now actively approach the JFSC to discuss matters with an overriding view that the JFSC will adopt a pragmatic risk-based approach.

9.111 The feedback from the industry participants goes on to state that this more open relationship with the JFSC has developed alongside a growing awareness within the industry that AML/CFT is relevant to all staff and must be embedded into the culture of a business.

Effectiveness of Suspicious Activity Monitoring and Reporting

9.112 Assigned rating - 0.6 Medium High

9.113 There is a stark comparison between the number of SARs submitted by regulated entities, and the actual number of ML related prosecutions and this perhaps indicates that the SAR process, or AML/CFT legislation in Jersey may need to be reviewed.

9.114 A number of improvements to the way in which data is collected in relation to the use of SAR intelligence, the filing of defensive SARs and the recording of information on the quality of reporting all feature in the conclusion and recommendations made in respect of the overall assessment of the control vulnerability for the TCSP and wider sectors.

Application of customer due diligence measures

9.116 Assigned rating - 0.6 Medium High

9.117 This section covers the following variables from the WB tool:

- Availability and Access to Beneficial Ownership Information (Assigned rating 0.7)
- Availability of a Reliable Identification Infrastructure (Assigned rating 0.6)
- Availability of Independent Information Sources (Assigned rating 0.6)

Customer Identification Measures

Use and application of certain concessions granted by the Money Laundering Order - reliance on Obliged Persons or Group entities

9.118 Data was specifically collected in order to assess the extent of the use of reliance arrangements by TCSPs in Jersey. This data demonstrates that for approximately 7,000 customers, reliance on Obliged Persons, or Group entities was applied.

9.119 In circa 24% of cases where reliance is being placed, the other party forms part of the same group as the entity which is placing reliance.

9.120 In order to be able to place reliance on Obliged Persons or other Group entities, TCSPs must be able to access the evidence obtained by the third-party under identification measures upon request and without delay. TCSPs provided information with regards the number of requests made on Obliged Persons to provide evidence and the response rate.

9.121 In 13% of cases the third-party failed to provide the evidence upon demand. The number of demands for evidence appears to be low compared to the total numbers of instances involving Obliged Persons, group or otherwise.

Use of agents, introducers and /or intermediaries

9.122 Given the size and location of Jersey, and its status as an IFC, a considerable amount of TCSP business arises as a result of introductions from intermediaries

such as London-based Lawyers and Accountancy firms. Data collected shows that the split of TCSP's intermediary relationships is as follows: lawyers 31%, accountants 14%; and other persons 55%.

9.123 Having enquired further with members of the TCSP NRA working group, it is understood that these "Other" intermediaries tend to be regulated entities such as Private Banks and Investment Managers.

Use and application of certain concessions granted by the Money Laundering Order - simplified customer due diligence measures

9.124 Data for the period 1 January 2018 to 31 December 2018 shows that simplified due diligence measures were applied in just over 2,000 instances during that period with the majority of these (81%) being applied by the super large TCSPs (>50 employees).

9.125 From the data collected it is difficult to draw any conclusions as to the extent of the application of simplified due diligence measures, as data was not collected on the actual number of customers taken on by TCSPs during the same period. It is therefore not known what proportion of new business during 2018 this concession has been applied to. It is clear however that TCSPs are encountering circumstances where they do believe that the application of simplified due diligence measures is appropriate.

Application of Enhanced Due Diligence Measures

9.126 The most recent data shows that 46% of all TCSP customers in Jersey have had enhanced due diligence measures applied. 31% of the sector's customer base, have been rated by TCSPs as presenting a higher risk of ML/FT and the data would therefore suggest that enhanced due diligence measures have been applied in all higher risk scenarios and a number of other instances.

9.127 Whilst the data collected indicates that a large number of TCSP customers are subject to enhanced due diligence measures, as alluded to above, TCSPs are required to apply enhanced due diligence measures where their customer is not resident in the same jurisdiction as the TCSP. Based on the fact that a large proportion of TCSP clients, which totalled 65,110 as at the end December 2018, are not resident in Jersey there would appear to be a mismatch between the number of clients requiring enhanced due diligence and those where it has been applied. It may be that the data collected is not fully understood.

9.128 Under the risk-based approach set out in the AML/CFT Handbook, there is currently no prescribed format for the enhanced element, over and above standard CDD. Instead the AML/CFT Handbook provides guidance on ways in which a TCSP may demonstrate that it has applied enhanced due diligence measures. However, there remains a vulnerability that enhanced due diligence measures applied may not go far enough to establish the true origin of source of funds and source of wealth, the beneficial owner or controllers relevant to the customer and the risk that control by other means may not be fully understood, assessed and documented.

Delayed verification

9.129 According to the data collected for the period ended 31 December 2018, TCSPs availed themselves of the delayed verification in respect of a small number of customers. Without information as to the actual number of customers taken on during the same period it is difficult to assess the exact extent of the application of delayed verification of identification.

Declined/Exited business

9.130 For the period ended 31 December 2018 TCSPs reported that over 100 applications for business had been declined due to concerns about the potential risks associated with taking on the business. At the same time around 20 customer applications were withdrawn as a result of further enquiries being undertaken by the TCSPs. Additionally, more than 120 customer relationships were terminated as a result of periodic risk reviews undertaken by TCSPs or adverse trigger events. It is unclear from the data submitted how many applications for business were received in total, and therefore what proportion were declined or withdrawn.

SECTION 10

Securities Sector - Funds

Key Findings:

The principal activity for fund operators is the provision of fund administration and management services. Public Funds account for the majority of investors and assets under management. Recently the greatest growth has been in the number of Jersey Private Funds, a product launched in April 2017. Most fund products in Jersey are aimed at professional/sophisticated investors.

The main AML vulnerabilities are:

- the complex and multi-jurisdictional nature of some of the fund structures
- the low level of direct supervision of funds, particularly Unregulated Funds and Legacy Private Funds
- the issues with the enforceability of the MLO and the lack of clear evidence of regulatory action being taken does not help to create a dissuasive environment
- the complexity of the legislative framework with respect to private funds, as it permits (i) TCB or IB Regulated Fund Operators, who may not have sufficient knowledge of the Fund AML/CFT requirements, and (ii) the exemptions which create the concept of supported fund operators.

The assessment of ML vulnerability for this sector is: Medium High (0.57) (ranked 2nd in importance across finance sector)

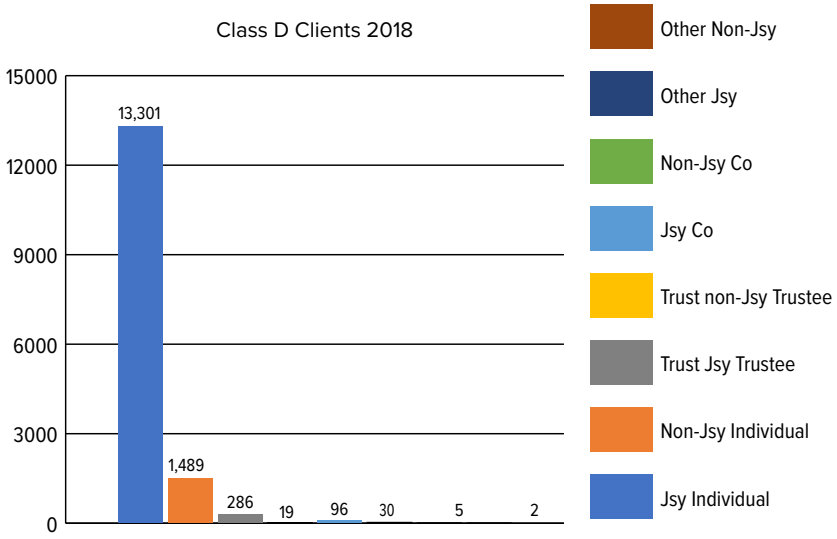
Overview of the Funds sector

10.1 Jersey has a mature established funds industry. The JFSC is responsible for the regulation and supervision of both fund products and their Fund Operators for prudential, conduct of business and AML/CFT purposes. The size of the sector and/or its share in the economy is deemed to be high. Total revenue figures from statistics produced by the States of Jersey from 2017 show the Funds sector had an estimated revenue figure of GBP 300m (GBP 200m fund administration, GBP 100m fund management). The total number of customers listed is estimated as 77,986 with total net assets value (NAV) at December 2018 of GBP 390,492m. States of Jersey finance and legal sector total GVA and productivity for 2017 was GBP 1,740m, the Funds sector contributed GBP 90m to that figure which was 5.1% of the overall figure.

Threats in the Funds sector

10.2 Below is a diagram giving a brief summarised overview of the funds and Fund Operator regime:

Diagram 10.1



10.3 The assessment of ML threat for this sector is - High.

10.4 From the data collected there were no ML investigations involving the sector during the relevant period and the JFSC had no records of cases that were investigated in this sector. There were no recorded ML prosecutions featuring the sector, and no convictions listed, the JFSC also had no recorded cases where sanctions have been taken by them. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium/high.

Vulnerabilities in the Funds sector

10.5 The funds sector is very diverse, for example there are 17 different classes of fund services business that can be provided alone or in any combination to Public Funds, and many possibilities for analysis of the sector. Analysis by asset class and role of Fund Operator did not produce materially different AML/CFT risks. It was decided by the NRA Funds Working Group that the analysis of the Funds' sector is best assessed by the types of fund product, which also enables consideration of the Fund Operators providing services to those funds. The inherent product vulnerability of each fund product is reduced by the control variables and the final product vulnerability for each type of fund is set out in the table below:

Table 10.1

Type of Fund	Final Product Vulnerability	Score out of 1
Public Funds	Medium High	0.72
Unregulated Funds	Medium High	0.68
Legacy Private Funds	Medium High	0.66
Jersey Private Funds (JPFs)	Medium High	0.62

10.6 Based on the scores all the Jersey Funds are rated as "Medium High" risk. Public Funds which represent approximately 80% of the value of the funds' market in Jersey have the highest score, followed by Unregulated Funds but not due to value but instead the nature of the client base. Legacy Private Funds which do not have a designated service provider (DSP) are third highest scored. Jersey Private Funds due to their restricted client base and requirement to have a DSP are rated with a lower risk score than the other fund types.

10.7 The view of the Fund's NRA Working Group is that Legacy Private Funds and Unregulated Funds pose the highest AML/CFT risk, however the WB Methodology, which appears to be influenced by size/volume, currently shows Public Funds as the highest AML/CFT risk. This has been partly addressed by the use of 5 risk models to adapt the controls variables; one global and one for each type of fund. The Fund's NRA Working Group also recognises that, while Legacy Private Funds continue to pose a risk, it is no longer possible to establish these types of funds consequently this is not an area of growth risk by volume of product/customers. The risks posed by the residual Legacy Private Funds will nevertheless need to be appropriately supervised until cessation.

Assessment of Inherent Vulnerability by Fund Type

10.8 Whilst each of the fund types were looked at individually there are some issues/ aspects that are common to all fund types. Highlighted in green in the following table are those variables assessed once across all four fund types, with the other variables assessed by each fund type.

10.9 The detailed analysis per variable is provided in the text below the table:

Table 10.2

Inherent vulnerability factors	Public Funds	Unregulated Funds	JPFs	Legacy Private Funds
1.Total value/size of product type	High	Low	Low	Medium Low
2.Complexity and diversity of the portfolio of the product type	High			
3.Client base profile of the product type	High Risk			
4.Existence of investment/ deposit feature for the product type	Available and Prominent			
5.Liquidity of the portfolio of the product type	Medium	Medium	Low	Low
6.Frequency of international transactions associated with the product type	High			
7.Other vulnerable factors of the product type				
7.1 Anonymous/ omnibus use	Available			
7.2 Existence of ML Typologies	Exist			
7.3 Use in market manipulation, insider trading or securities fraud	Exist but Limited			

7.4 Difficulty in tracing records	Easy to trace	Difficult/ Time Consuming	Easy to trace	Difficult/ Time Consuming
7.5 Non-face-to-face use	Available & Prominent			
7.6 Level of cash activity	Does Not Exist			
7.7 Availability of Product Specific AML Controls	Exist & Comprehensive	Exist & Limited	Exist & Limited	Exist & Limited

Total value/size

10.10 To assess the size of each product type the reported NAV of the funds market in Jersey and number of funds was used as at 31 December 2018:

Table 10.3

2018			
Fund Type	**Number**	**% and value of Funds market NAV**	**Rating based on number and value**
Public Funds	760 (comprising of 442 Jersey Unclassified Funds, 313 Non-Domiciled Funds (NDFs) and 5 Jersey Recognized Funds)	79.3%	(GBP 309,782m)
High	Legacy Private Funds	547 (comprising of 201 CoBO Only Funds & Private Placement Funds (PPFs) and 346 Very Private Funds)	7.4%
(GBP 28,870m)	Medium Low	Unregulated Funds	128
5.4%	(GBP 21,132m)	Low	JPF
204	7.9%	(GBP 30,708m)	Low

Complexity and diversity of the product type

10.11 One of the key aspects of Jersey's fund offering is its ability to accommodate complex fund structures and alternative assets. For funds with professional investors, the JFSC will permit more unusual asset classes providing the risks they pose are identified and managed appropriately – e.g. Digital Assets such as Bitcoin. Assets can be located globally, although all funds and Fund Operators are required to be aware of sanctions regimes relevant to their business, enhanced risk states and the higher risks posed by countries listed in Appendix D2 of the AML/CFT Handbook. On the basis that there are no restrictions on the complexity of assets that the funds can invest in (save for Recognized Funds and a very small minority of Jersey Open ended public funds) all of the funds are scored in relation to complexity and diversity as "High".

Client base profile

10.12 To assess this variable the following factors have been considered: fund promoters, risk assessment of funds; application of enhanced due diligence; numbers and type of investors; country of investors; risk rating of investors and number and country of PEP connections to investors across all four product types.

10.13 In all four of the fund types, the majority of the investor connected countries are with AML/CFT equivalent countries. It was noted that the majority of the promoters are AML/CFT regulated: Public Funds, Unregulated Funds 2017: 68% (2018: 82%) and JPFs, 2017 and 2018: 77% are regulated for AML/CFT.

10.14 In Public Funds, even though approximately 95% of the investors are non-Jersey, the proportion of PEPs is low at 3%, over 30% of the investors are invested in the most highly regulated fund products (Recognized Funds). Over half the investors are individuals. In 2017, 54% of investors (2018: 43%) were retail and 95% are assessed as lower or standard risk. The highest volume of investors are in Public Funds and therefore the client base profile variable is assessed as "High".

10.15 Factors that lead to a "High" assessment of the client base for Unregulated Funds are:

- 2017: - 99% (2018: 100%) of investors are professional investors and over 55% of investors are not individuals, although, it is noted that the Professional Investors have not been sub divided to ascertain the numbers of institutional investors;
- the percentage of PEP connections to investors at 5% is higher than public funds (3%); and
- 2017: 87% (2018 - 79%) of the Unregulated Funds are Eligible Investor Funds and because the most basic eligibility criteria for such a fund is that the investor must invest at least USD 1m these are likely to be High Net Worth Individuals and entities.

10.16 The two Private Fund products, JPFs and Legacy Private Funds, are aimed at High Net Worth Individuals and entities. JPFs particularly have a high percentage of PEPs to investors (2017: 13% 2018: 18%). Private Funds have a limited number of investors, in particular Very Private Funds (type of Legacy Private Fund) have a restricted circle of no more than 15 investors. These "club" type arrangements are potentially a concern due to the ability of a small number of investors to have control over the fund and therefore potentially represent a higher AML/CFT risk. On this basis both these fund types' client base profile is assessed as "High". Although in relation to the JPFs, only 12.5% of the Designated Service Providers (DSP) have a TCSP licence **without** a Fund Services Business (FSB) licence (TCB Fund Operator), 40% of these have entities with an FSB licence in the same group. This means that while these TCSP Fund Operators are the DSP, those JPFs they act for are restricted to no more than 15 investors. TCSP Fund Operators may not be as familiar with the Funds AML/CFT requirements as those Fund Operators that are predominantly FSBs (recognising a high level of FSBs also hold TCSP licences).

10.17 There is also the concern in relation to Very Private Funds, part of the Legacy Private Funds, that one investor is investing on behalf of multiple underlying investors, thereby avoiding the regulatory framework of being classified as a Public Fund. Since the introduction of the Jersey Private Funds Guide (JPF Guide) in 2017 and the requirements placed on the regulated DSP this is less of a risk than it was historically.

10.18 Client base profile was assessed as high risk for all four types of fund products.

Investment Deposit Feature

10.19 All of the fund types allow investment/deposit of funds into the financial system so the variable Existence of Investment Deposit Feature is rated available and prominent.

Liquidity of portfolio of the product type

10.20 In considering this variable; the ease with which investors could subscribe and divest themselves of interests in the funds was looked at. Considering this variable from the ability for an investor to enter and exit the investment (which influences the liquidity of the asset class that the funds invest in):

- 50% of the Public Funds are open ended or listed therefore, it is possible for investors to subscribe and divest themselves of investments in these types of Public Funds easily. The liquidity of this product is assessed as “Medium”.
- 2017 - 44% / 2018 - 36% of Unregulated Funds are either open ended or listed therefore the liquidity of Unregulated Funds is assessed as “Medium”.
- On the basis that the numbers of investor in both JPFs and Legacy Private Funds are limited, that the majority of these funds are closed ended thereby restricting redemptions typically to the end of the life of the structure and that the assets are mainly illiquid the variable is assessed as “Low” for both JPFs and Legacy Private Funds.

Frequency of international transactions

10.21 The statistics show that investors in Jersey funds are predominantly international as are the investments. Consideration was given to whether the money actually comes through Jersey e.g. one group of fund products account for 15% of the NAV of Public Funds and none of the investor money comes to Jersey. Also, some funds use non-Jersey custodians. It was agreed that while the money does not come to or from Jersey, the Jersey funds facilitate international transactions.

10.22 Purely on the basis that 90% of Jersey Funds investors are non-Jersey, the majority of the transaction payments received from investments and payments to investors are international. Therefore, this variable is rated as “High” although it is noted that these transactions may be infrequent particularly in relation to closed ended funds.

Anonymous/omnibus accounts

10.23 It is possible that certain entities use pooled accounts to invest in funds, such as a Bank or a discretionary investment manager acting on behalf of a number of their own clients or investors that are fund of funds or listed funds. If AML/CFT requirements are applied, particularly the three-tier test, funds must identify the investor and also those third parties for whom the investor acts and this means the identity of the person behind pooled accounts should be ascertained. Where the fund may not need to ascertain each third party is where the investor is regulated and simplified due diligence is applied (Article 17 of MLO, where the investor knows the identity of the third party). Therefore, while this is available, the ability to conceal the identity and for the ultimate investor to remain anonymous is limited therefore this variable is assessed as “Available”.

Existence of ML Typologies

10.24 The Funds industry's complexities mean their main AML/CFT vulnerability is by being part of the layering and concealment process, which makes the proceeds of crime difficult to trace and prosecute. Such complexities include the potential to have multiple layers in the structure of the fund, its investors and its structure types together with the cross-border aspects and external parties involved such as nominees, advisers and counterparties. Therefore, it is perhaps difficult to prepare standard typologies and instead best to focus on common risk indicators/red flags.

10.25 On the basis of public statements, the analysis done of international typologies and the high-risk indicators included in the Fund Section of the AML/CFT Handbook ML typologies are found to "Exist".

Use in Market Manipulation, Insider Trading or Securities Fraud

10.26 The use of funds to manipulate markets is not seen as prevalent (9% of Public Funds are listed and 12% of Unregulated Funds are listed) and is assessed as "Exist but Limited" on the basis that:

(1) there are multiple Fund Operators providing services to a fund which in most cases are independent of each other which represents a check and balance;

(2) the majority of Public Funds (90%[72]) have passive investors who do not have control and are not in a position to manipulate the fund. It is only the Public Funds and Unregulated Funds that can be listed on an exchange;

(3) Jersey Public Funds are required to have a regulated Fund Operator and a minimum of 2 Jersey directors all of whom have to understand the rationale of the fund and monitor the activities of the fund;

(4) every JPF has to have a DSP.

10.27 The fund products that may be vulnerable to market manipulation are those that are not subject to the regulatory codes and may have only one Jersey service provider providing limited services, such as Very Private Funds or Unregulated Funds. Oversight by the Jersey regulated Fund Operator mitigates this as it will be subject to AML/CFT requirements and the fund is also a relevant person and subject to AML/CFT requirements in its own right.

10.28 There is the possibility of funds being used to hide the proceeds of market manipulation or insider trading but this would be the same for any other proceeds of crime and is mitigated by due diligence on investors source of funds as required by the AML/CFT Handbook.

Difficulty in tracing records

10.29 Problems were identified with collation of data from outdated data holding systems and where the records are held in paper form. There are however some factors that have led to data being more easily obtainable:

(1) the level of prudential regulation for Public Funds (Codes requirements) including the filing of quarterly statistics means that their data is likely to be

[72] JFSC 2017 Data Collection Exercise 92% and 2018 90%.

held in more accessible form;

(2) internationally, funds are increasingly subject to data reporting requirements from a regulatory perspective such as the AIFM Directive in relation to National Private Placement regimes;

(3) although JPFs have only been in existence since April 2017, the online application process and the move towards electronic data mean it is less likely for data to be held in a paper format;

(4) AML/CFT requirements for record keeping are the same for both Public and Private Funds which means that data systems used for both are now often the same or similar; and

(5) Industry indicated that they were updating old systems and building new systems to make data easier to retrieve.

10.30 For the reasons set out in the preceding paragraph in relation to Public Funds and JPFs the variable to trace records is assessed as "Easy to Trace".

10.31 Historically, there was no ongoing data reporting requirement for Legacy Very Private Funds or Unregulated Funds and any data the regulator sought to be obtained was by request. While CoBO-Only funds and PPFs have some reporting requirements, the age of some of the Legacy Private Funds means much of the original documentation relating to these products was paper based. Therefore, this variable regarding tracing records for Legacy Private Funds and Unregulated Funds is assessed as "Difficult/Time Consuming".

Non-face-to-face use

10.32 Jersey fund products are made available to non-Jersey residents, and further that most of the investors in Jersey Fund products are non-Jersey residents. Therefore, the non-face to face use variable is assessed as "Available and Prominent" for all Fund types.

Level of Cash Activity

10.33 Cash is not accepted by any Jersey regulated Fund Operators or Funds. While the acceptance of cash is not prohibited, the fact that no entities accept cash has led to this variable being assessed as "Does Not Exist" for all Fund types.

Availability of Product Specific AML Controls

10.34 The Funds Section of the AML/CFT Handbook (Funds Section) which was published on 10 March 2017 is designed to deal with AML/CFT fund specific issues and was the product of extensive consultation with industry and the JFSC Supervision and Enforcement Teams. The Funds Section applies to all funds and Regulated Fund Operators. In the 2018 survey of consultants the Funds Section was described positively as "user friendly". JPFs have to have a DSP who provides a confirmation regarding the JPF's AML/CFT compliance annually. All relevant persons are required to have an MLRO and MLCO but Jersey Public Funds and Regulated Fund Operators have to have a Jersey based MLRO, MLCO and Compliance Officer. Due to the additional controls for JPFs and Public Funds, the Product Specific AML Controls are assessed as "Exist &

Comprehensive" compared to Legacy Private Funds and the Unregulated Funds which are assessed as "Exist & Limited".

Control Variables

10.35 Effectiveness of Supervision Procedures and Availability and Enforcement of Administrative Sanctions have been assessed per fund product. The other control vulnerabilities have been assessed for the whole of the Funds Sector. In the table below is a summary of the ratings given to each of the 13 Control Vulnerabilities Variables in relation to the Funds Sector:

Table 10.4

Control Vulnerabilities Variables – Funds Sector	Public Funds	Unregulated Funds	JPFs	Legacy Private Funds
1. Comprehensiveness of AML Legal Framework	High			
2. Effectiveness of Supervision Procedures and Practices	Medium High	Medium Low	Medium	Medium Low
3. Availability and Enforcement of Administrative Sanctions	Medium	Medium Low	Medium Low	Medium Low
4. Availability and Enforcement of Criminal Sanctions	Medium Low			
5. Availability and Effectiveness of Entry Controls	Medium High			
6. Integrity of Staff in Securities Firms	High			
7. AML Knowledge of Staff in Securities Firms	Medium High			
8. Effectiveness of Compliance Function (Entity)	Medium High			
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium High			
Control Vulnerabilities Variables – Funds Sector	**Public Funds**	**Unregulated Funds**	**JPFs**	**Legacy Private Funds**
10. Level of Market Pressure to Meet AML Standards (Optional)	Very High			
11. Availability and Access to Beneficial Ownership Information	High [0.7] (done by Banking and Vulnerabilities Groups)			
12. Availability of Reliable Identification Infrastructure	Medium High [0.6] (done by Banking and Vulnerabilities Groups)			
13. Availability of Independent Information Sources	Medium High [0.6] (done by Banking and Vulnerabilities Groups)			

Comprehensiveness of AML Legal Framework- High

10.36 The Jersey AML/CFT regulatory framework for the Funds sector is more comprehensive than other jurisdictions, such as the requirement for a JPF to have a DSP who provides an annual statement that the JPF is AML/CFT compliant and the requirement to have Jersey-based MLROs and MLCOs for Regulated Fund Operators and Jersey Public Funds. The JFSC published the

Funds Section in 2017 and at that time was one of the few jurisdictions that produced specific guidance on the application of AML/CFT specifically by funds as well as Fund Operators. The Funds Section gives guidance to industry with emphasis on looking at the risks posed by the whole fund structure[78]. A gap appears to exist where industry is required to apply the guidance practically to their own organisation and consider what is appropriate for their particular entity.

10.37 Two risks may potentially arise in relation to fund operator expertise:

TCSP or IB Regulated Fund Operators may not have sufficient knowledge of the Fund AML/CFT requirements when providing services in relation to JPFs and Legacy Private Funds.

- All relevant persons who are Fund Operators must comply with the requirements of the Money Laundering Order. A Regulated TCSP or IB Fund Operator also has to have an appropriately qualified and experienced MLCO and MLRO.
- The Fund, which is a relevant person, has responsibility for its own AML/CFT obligations and has to have an MLCO and MLRO with the appropriate training and level of seniority. Additionally, there is a dedicated Funds Section of the AML/CFT Handbook to provide appropriate guidance.
- In relation to Legacy Private Funds, the PPFs have a Jersey designated service provider which is licensed to conduct Fund Services Business. While JPFs have a DSP who has to give confirmations regarding AML/CFT compliance. Based on statistics from the JFSC on 19 June 2019, 12.5% do not have a Fund Services Business Licence (they have TCSP Licences only) and they can only act for JPFs with 1-15 investors. The 10 Fund Operators surveyed in the Legacy Private Funds Project, those that have over 50% of the Very Private Funds and CoBO Only Funds, either have an FSB licence or their affiliate members have FSB licences.

Jersey Funds AML/CFT obligations are delegated to a non-Jersey Fund Operator to fulfil.

The Board of Directors of the Governing body of the Jersey Fund remains responsible for the AML/CFT compliance and needs to oversee and monitor the fund's AML/CFT compliance. Jersey Public Funds have to have 2 Jersey directors and a Jersey-based MLCO and MLRO. Legacy Private Funds and JPFs also have to have an appropriate qualified and experienced MLCO and MLRO. The responsibilities of the MLCO, MLRO and the board should ensure appropriate AML/CFT compliance. Please also refer to paragraphs below regarding "Effectiveness of Supervision/Oversight Activities Effectiveness of Supervision/Oversight Activities".

10.38 Concessions such as reliance and simplified due diligence are available. Statistics collated in the JFSC 2017 & 2018 Data Collection Exercises demonstrate that these do not appear to be widely used by FSBs in relation to their Public Fund clients. Particularly in relation to reliance, the Funds NRA Working Group said that in their organisations, they generally prefer to collate CDD themselves. Data collected in 2017 and 2018 FSBs (which are not managed entities) shows that: (i) 2017: 13% (2018: 16%) indicated they used reliance on obliged persons; (ii) 2017: 7% (2018: 6%) relied on related or group entities; (iii) 2017 and 2018: 30% used Article 17 of the MLO simplified due diligence (third

parties) and (iv) 2017: 25% (2018: 24%) used Article 18 of the MLO simplified due diligence (customers).

10.39 Concession use by funds was also low, the most prevalent being simplified due diligence on customers pursuant to Article 18 of the MLO and use of this was 2017: 18% (2018: 25%) in Unregulated Funds, and 2017 15% (2018 - 18%) in Public Funds. The application of Article 18 of the MLO is indicative that around half the JPF investors seem to be more institutional in nature and are likely to be subject to AML/CFT controls in their own right.

10.40 There exists an exemption from the requirements of the MLO for Supported Fund Operators, provided that they have a Regulated Fund Operator supporting them. There are no gaps in the AML/CFT framework because a Regulated Fund Operator is applying AML/CFT measures. The Fund Operator providing support services to the Supported Fund Operator has to undertake CDD on its customer (the Supported Fund Operator) and the third party for whom the customer acts (the fund).

10.41 Supported Fund Operator Exemptions are of limited effect because:

- If the fund is a Jersey fund or a non-Jersey fund that is a relevant person, they will be regulated for AML/CFT in their own right;
- Where the Supported Fund Operator is the governing body of a fund (e.g. a Jersey general partner or a Jersey trustee) where they are exempt from AML/CFT requirements as a Fund Operator, if the fund (e.g. Limited Partnership or Unit Trust) they govern is required to comply with Jersey AML/CFT requirements, they will be responsible for the fund's AML/CFT compliance;
- The NRA Funds Working Group indicated that where their employer is contracted to provide services to a Supported Fund Operator that is the governing body of a fund subject to Jersey AML/CFT requirements they are often responsible for the collation of CDD in relation to the fund. This is similar to the relationship between a Manager of Managed Entities (MoME) and an FSB Managed Entity where in 2017: 87% / 2018: 85% of MoMEs provide services directly to the funds the FSB Managed Entity acts for;
- There is one Supported Fund Operator exemption that is available in relation to funds offered to the public (Public Funds, Recognized Funds and Unregulated Funds) and that is for fund operators that are set up specifically for the purpose of being either a trustee or a general partner of an Unregulated Fund (SPV GP/Trustee Exemption); and
- The Professional Investor Regulated Scheme Exemption (PIRS) is the most common exemption that Fund Operators to Private Funds rely on. If the Private Fund qualifies as a Professional Investor Regulated Scheme (in particular the investor needs to meet eligibility criteria (which includes being a professional investor or investing GBP 250,000 or more) and receive and acknowledge an investment warning) then its Fund Operators can be exempted from seeking registration as a TCSP and/or IB.

10.42 If a Private Fund Operator relying for example on PIRS is not supported by a Regulated Fund Operator, it will be subject to the AML/CFT regime and will have to register under the Supervisory Bodies Law. Currently there are no Private Fund Operators registered.

10.43 An anomaly has arisen whereby the Fund Operator to a Supported Fund Operator relying on the PIRS TCSP exemption has to have a TCSP regulated Fund Operator but cannot be an FSB regulated Fund Operator. Whereas a Supported Fund Operator relying on the PIRS IB exemption can have either a TCSP or an FSB regulated Fund Operator. This is being reviewed as part of the JFSC Exemptions Project.

10.44 A vulnerability is that without specific notifications regarding the exemption and the identity of the Supported Fund Operator it is difficult for the JFSC to ensure the regulated Fund Operator supporting the Supported Fund Operators is fully complying with all of its AML/CFT obligations in relation to the Supported Fund Operator as a result of assuming this role.

10.45 The comprehensiveness of Jersey AML/CFT framework for funds is assessed by the Funds NRA Working Group as “High”.

Effectiveness of Supervision/Oversight Activities - Assessed per fund product.

10.46 The JFSC uses a risk-based approach to the supervision of the funds industry from a conduct/prudential and an AML/CFT perspective. The JFSC conducts onsite and desk-based supervision examinations. In addition, a number of visits to TCSPs would have covered entities and groups which provide services to public and in particular private funds. In terms of coverage, the larger entities or group of entities are subject to more frequent examinations, which in turn target a large number of funds and connected fund service providers. In addition, the JFSC undertakes significant supervision activity offsite such as regular meetings with industry to discuss particular issues such as AML/CFT, making entities subject to heightened supervision, dealing with industry reported MLO breaches. All supervision findings are tracked on a regular basis until they can be closed satisfactorily, or the entity is subject to a longer-term remediation plan. For a number of higher risk findings, validation of the closing of a finding will take the form of targeted controls testing, a follow-up examination or in more serious cases, usually in conjunction with the JFSC Enforcement team, a reporting professional may be appointed to test the effectiveness of an entity’s remediation.

10.47 Given the lack of experienced funds compliance staff within the private sector, the JFSC is a target for industry recruitment, as industry can offer larger financial incentives than the JFSC. Industry has expressed concern over the general levels of supervision staff turnover at the JFSC. Staff turnover risk is high and while the JFSC does lose staff to industry the last three years has seen reducing levels of staff turnover at the JFSC from a high in 2016 to a level of approximately 10%.

10.48 In addition to the FSB supervision team who has direct day to day responsibility for the oversight and supervision of FSB’s and Funds, the JFSC has now in place two examination teams in support of regulatory oversight. The Supervision Examination Unit (SEU) has responsibility for examinations on an entity basis, risk specific basis and thematic basis. The Financial Crime Examinations Unit (FCEU) was established in 2019 with responsibility for financial crime examinations at an entity level.

10.49 The JFSC is in receipt of a huge amount of data, such as beneficial ownership

information, information in personal questionnaires (directors, key persons and beneficial owners), fund quarterly statistics, JPF annual returns, AIFMD reporting and the data from the JFSC supervisory data collection exercise. The JFSC is developing their systems and capability to assimilate all this data into their systems and risk model and provide coherent and comprehensive risk management information which can be used effectively to inform a risk-based approach to supervision.

10.50 The JFSC supervises funds via its Fund Operators. Public Funds are supervised via their Fund Services Businesses. Private Funds are supervised via oversight of their FSB, TCSP or IB regulated Fund Operators or in the case of Supported Fund Operators by their connected FSB, TCSP or IB Fund Operator[74]. Where services provided by the Regulated Fund Operator to funds are limited, e.g. to providing registered office only, this creates a vulnerability for JFSC supervision

10.51 For example, a FSB applies CDD in relation to its customer being the Unregulated Fund and while the FSB may as part of its CDD on the Unregulated Fund undertake CDD on some of the Unregulated Funds investors, it will not be undertaking CDD on all of them as part of its own obligations. If the Unregulated Fund's ownership is widely held the FSB may not do any CDD on the Unregulated Fund investors. The Unregulated Fund is required to comply with Jersey AML/CFT requirements and apply CDD in relation to all of its investors, however as there are no regulatory requirements to have Jersey Directors or a Jersey resident MLCO or a Jersey resident MLRO its only nexus to Jersey would be the FSB registered office provider. Such Jersey Fund Operator is required to understand its Unregulated Fund customer to manage the risks posed by that customer, but unless it has outsourced to it the role to undertake CDD on the Unregulated Fund's investors, it may not obtain CDD on all of the Unregulated Fund's investors., The limited connection creates a vulnerability with respect to supervision, and potential enforcement. Of the AML regime as it applies to the Unregulated Fund as a relevant person. It is noted however that one of the two types of Unregulated Fund – i.e. the Unregulated Exchange Traded Funds can no longer be established.

10.52 To address the question of Effectiveness of Supervision Procedures and Practices the table below considers this per product type where the product is a relevant person. This table demonstrates that there are generally sufficient measures in place to ensure that funds receive appropriate oversight.

[74] As a result, the IB and TCSP sector sections on supervision in this report are also relevant..

Table 10.5

Jersey Nexus	Public Funds	Unregulated Funds	JPFs	Legacy Private Funds
1. Requirement to have Jersey Directors on fund Governing Body	2 for Jersey Public Funds None for NDFs	None	None, although the JFSC would ordinarily expect, in the majority of cases, for one or more Jersey resident directors to be appointed to the board of a JPF's governing body.	None for Very Private Funds CoBO Only Funds / PPF – 2 Jersey Directors
2. Requirement to have Jersey resident MLRO and MLCO	Mandatory for all Public Funds and guidance for NDFs that are Relevant Persons	Mandatory to have MLRO and MLCO but only guidance that they be Jersey resident	All JPFs that are Relevant Persons whether Jersey or Non-Jersey have to have MLRO and MLCO but only guidance that they be Jersey resident	All Private Funds that are Relevant Persons whether Jersey or Non-Jersey have to have MLRO and MLCO but only guidance that they be Jersey resident
3. Requirement to have a Jersey Fund Operator	A Jersey Public Fund must have a least one and an open-ended retail fund must have Jersey Manager and Jersey custodian NDFs that are subject to Jersey AML/CFT have a management and control function in Jersey for example: general partner, trustee, manager, investment manager	A Fund Operator with the FSB class of MoME must as a minimum provide the registered office	Every JPF be it a Jersey entity or non-Jersey entity must have a DSP	Very Private Fund = there is no requirement other than Registered Office of the product or its governing body PPF = DSP with FSB Class. CoBO only= Jersey Administrator.
4. Requirement to be Jersey domiciled.	Jersey Public Funds are Jersey entities.	A Fund Operator with the FSB class of MoME must as a minimum provide the registered office	All JPFs that are Relevant Persons whether Jersey or Non-Jersey have to have MLRO and MLCO but only guidance that they be Jersey resident	All Private Funds that are Relevant Persons whether Jersey or Non-Jersey have to have MLRO and MLCO but only guidance that they be Jersey resident
5. How are the Funds Supervised via Regulated Fund Operators?	Fund Services Businesses are subject to supervision and in order to supervise the services they provide it is necessary to review the Public Funds and Unregulated Funds they act for particularly where the Fund AML/CFT compliance is outsourced to the FSB. Only Supported Fund Operators of Unregulated Funds that are SPV GPs/Trustees must have a regulated FSB service provider		Through the supervision of the mandatory Jersey DSP	Very Private Funds - through supervision of Jersey regulated service provider the minimum of which will be registered office provider

6. Compliance with codes, guide, conditions?	Jersey Public Funds have to comply with CIF Codes , relevant product guides and legislative requirements NDFs do not	Unregulated Funds do not need to comply with the CIF Codes but do need to meet and maintain product eligibility criteria under the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (UFO)	JPFs have to remain compliant with the JPF product guide	Very Private Funds- have to comply with conditions on their consent. CoBO Only Funds / PPFs have to comply with conditions on their consent. PPFs also have to comply with the JFSC's PPF product guide
7. Statistics	Jersey Public Funds and NDFs provided with a major function have to file statistics quarterly	No Statistics requirement	JPF have to provide statistics via an annual compliance return	Very Private Funds provide no statistics.
8. 2017 & 2018 JFSC Data Collection Exercise	Data was collected from all these fund product types.			Legacy Private Funds Project where top 10 service providers were surveyed to provide data on over half of all Legacy Private Funds
9. Financial Statements	Audited and reviewed annually by JFSC	Filed with Jersey Companies Registry where Public Company.	Available upon request to JFSC and requirement to advise JFSC of any qualified audit (where accounts are audited)	Very Private Funds – no requirement other than statutory requirements. CoBO only/PPF– Audited and available upon request to JFSC. PPFs have to advise JFSC of any qualified audit

10.53 The Funds NRA Working Group indicated that it was their view that most Regulated Fund Operators would not provide registered office only services.

10.54 In the Legacy Private Fund Project 92% of Very Private Funds were Jersey resident, 77% of CoBO Only funds were Jersey resident and 60% of PPFs were Jersey resident. The JFSC's powers against Jersey resident entities will be more effective. Whereas in the example given above, minimum services that may be provided e.g. registered office, the Legacy Private Funds project demonstrated that Regulated Fund Operators rarely provide such limited services. The Legacy Private Funds project showed 52% provided management services, 99% provided administrator or DSP and 70% provided the MLCO and MLRO. The more extensive the services provided to the Legacy Private Funds the more effective the JFSC's supervision is likely to be.

[75] Code of Practice for Collective Investment Funds issued under the Collective Investment Funds (Jersey) Law 1988, covers prudential and conduct matters but also includes the Guides for the type of Public funds.

10.55 The JFSC supervision teams, when they visit Regulated Fund Operators, review funds to which services are provided to and this includes Unregulated Funds and Private Funds. The JFSC also operates a PIRS Exemption. During the NRA period, authorities were unable to extract sufficient data on the number of Unregulated Funds and Private Funds the Supervision Teams have interacted with on an annual basis. However, evidence of this interaction can be found in public statements and other enforcement cases involving unregulated funds. The JFSC Supervision Teams state that they have liaised with the governing bodies of both Unregulated Fund and Private funds.

10.56 Statistics for Very Private Funds and CoBO Only funds were provided to the TCSP Supervision team in 2011 and 2013. Data was collated on Legacy Private Funds and Unregulated Funds via the JFSC's 2017 and 2018 Data Collection Exercises. Also, since April 2017 the JPF is now the only new type of private fund available and the Legacy Private Funds are diminishing.

10.57 Although the JFSC supervises funds through their fund operators, there are sufficient measures in place to ensure that funds receive appropriate oversight. Table in 10.5 (above) establishes the supervision oversight undertaken through the requirements imposed on the various fund types. In the table there are fewer requirements imposed on Legacy Private Funds and Unregulated Funds leading to a rating of "Medium Low" for supervision effectiveness. Whilst the position for JPFs is similar, they have the additional oversight of the DSP and have to file annual compliance confirmations, this results in a rating of Medium. As Public Funds are subject to the most oversight they are assessed as "Medium High"

Availability and Enforcement of Administrative and Criminal Sanctions – Assessed Per Fund Product

Administrative Sanctions

10.58 The JFSC has a wide and diverse range of administrative sanctions available to it under the Supervisory Bodies Law. In a Finance Sector Survey, 94% of FSB/AIFSB[76] respondents felt that the existing AML/CFT sanctions available to the JFSC to be sufficient to positively influence management and staff behaviour in their organisations. The Survey also reported that 90% of FSB/AIFSB respondents believe that the JFSC would initiate supervisory sanctions against it in cases of non-compliance with AML/CFT requirements and expressed the view that the JFSC exercises its AML/CFT supervisory powers broadly effectively. The FSB/AIFSB respondents were also of the view that the JFSC exercises its power impartially and responds appropriately and proportionately to AML/CFT findings

10.59 Visible JFSC enforcement action is largely limited to JFSC Public Statements. However, Jersey is a small jurisdiction and when a public statement is made banning industry participants (naming & shaming) it makes headlines in the local press. Only two civil financial penalties have been imposed since the introduction of the regime in 2015 and the ability to levy civil financial penalties against individuals has only recently been introduced. Non-public measures taken by the JFSC include requiring directors to attend compulsory training, using legal powers (e.g. directions) to compel remediation, requiring the bolstering of experience in the boardroom, actively engaging with industry such that a troubled firm merges with another Financial Service Business, imposing temporary signatories, requiring regular updates on the progress of remediation, requiring the bolstering of weak compliance functions.

[76] Alternative Investment Fund Services Business

10.60 The JFSC enforcement team produced statistics for enforcement cases (9 between 2015 and 2018) that relate to AML for funds and FSBs. Analysing the public statements made in relation to Funds and Fund Operators is challenging because it is not always clear which sector of the industry that the public statement relates to, although a key indicator is the regulatory law under which action has been taken. It would be beneficial if there was a clearer way of indexing the Public Statements by sector. Many of the public statements relate to fraudulent activity where unauthorised products and services not regulated by the JFSC are offered. The JFSC is proactive in identifying online fraudulent activity (the predicate offence) and issuing public statements to prevent fraud and protect the public.

10.61 The Public Statements demonstrate the JFSC has taken action:

- leading to the revocation of licences[77];
- preventing individuals performing any function, engaging in any employment or holding a position in the business[78]; and
- working with regulated businesses to remediate and ensure measures are taken to meet AML/CFT requirements[79].

10.62 Not all of the public statements have sufficient detail to be cautionary tales and provide clear descriptions of what was done wrong and what legislative provisions were breached. It is particularly of note that sometimes in relation to the subjects of the statements there is more information in the public domain than in the public statement itself. One of the JFSC's guiding principles is to protect the public and reasons for the lack of detail maybe that:

- there are regulatory actions and criminal actions in progress and it would be prejudicial to provide detailed information; and/or
- the primary purpose of the public statements is to advise the finance industry of the banning of principal persons/registered persons in order to stop such persons undertaking further activity in the finance industry and to prevent any further detriment to the public as quickly as possible while further investigations are being made.

10.63 A vulnerability is posed by the cross-border nature of funds which may have a limited nexus to Jersey and have directors and fund operators in different jurisdictions. This issue is not limited solely to Jersey and the ability to pursue administrative sanctions against people and entities in other jurisdictions is particularly acute in the funds sector. Jersey law enforcement have taken action to extradite suspects and have demonstrated this with the case of Russell King who fled to Bahrain to avoid 20 charges including fraud, forgery and theft connected to the Belgravia Group and Funds[79] (which was subject to JFSC investigations and subject to an onsite visit in 2008) and was extradited in November 2018[80]. Russell King pleaded guilty to stealing GBP 670,000 and was jailed for six years[81].

10.64 The JFSC Enforcement and Supervision Teams do assist overseas agencies in the prosecution of financial crime and predicate offences.

77 Trustcorp Services Limited and others
78 Horizon Trustees (Jersey) Limited
79 Equity Trust (Jersey) Limited
80 See Belgravia Press Releases https://www.jerseyfsc.org/the-commission/general-information/press-releases/
81 https://www.bailiwickexpress.com/jsy/news/fraud-suspects-18k-extradition-included-first-class-flight/#.XRsPJ3lYbcs

10.65 While the JFSC is tasked with supervising compliance with the MLO and take action for regulatory breaches, where there is a breach of the MLO that is a criminal action, it is the responsibility of law enforcement to prosecute. This split between investigation by the JFSC, regulatory action by the JFSC and the requirement of law enforcement to prosecute breaches of the MLO has created contention. There appears to be a lack of clarity regarding how and who should deal with MLO breaches, particularly where they are books and records type offences which still amount to a crime as a breach of the MLO but are not actually laundering the proceeds of crime. There have only been two prosecutions under the MLO since 2005.

10.66 Law enforcement seem to view action on these books and records breaches is the responsibility of the JFSC Enforcement team. As a result, the JFSC has taken action under the regulatory laws and the Supervisory Bodies Law for regulatory breaches. The classification of all MLO breaches as criminal had been identified as a vulnerability and a solution is being actively sought.

10.67 Administrative sanctions activity is partially influenced by the effectiveness of JFSC supervision. Most enforcement activity is not visible to the public which also impacts on the assessment. The Funds NRA Working Group has reviewed each product type and assessed the Availability and Enforcement of Administrative Sanctions for Legacy Private Funds, JPFs and Unregulated Funds as “Medium Low” and assessed Public Funds as “Medium”.

Criminal Sanctions

10.68 Regarding criminal sanctions, work is being undertaken on this. Due to the lack of public prosecutions the Funds NRA Working Group has assessed the Availability and Enforcement of Criminal Sanctions as “Medium Low”.

Availability and Effectiveness of Entry Controls – Medium High

10.69 Jersey Public Funds go through an authorisation process with the degree of scrutiny depending on the product type with some relying on confirmations from Fund Operators and others subject to a full document review. Unregulated Funds are subject to the eligibility requirements of the UFO, Private Funds have to obtain a consent under the CoBO and JPFs have to comply with the JPF Guide published by the JFSC. Where Supported Fund Operators are Jersey established entities set up through the Registrar of Jersey Companies then these will be subject to the entry controls of the Registrar of Jersey Companies. If funds are non-Jersey established entities or unit trusts, then they will not be subject to Registry entry controls but will be subject to a JFSC authorisation process. An NDF in most cases will require a consent from the JFSC in order to undertake various activities in Jersey such as circulating an offer document and raising money by issuing units.

10.70 The combination of requirements on a fund: (i) to obtain a consent/ licence or meet eligibility criteria; (ii) the regulation of funds that are relevant persons for AML/CFT in their own right; (iii) the connection to a Regulated Jersey Fund Operator that is also subject to AML/CFT requirements; and (iv) the entry controls of the Companies Registry in relation to Jersey structures, leads to an assessment of this variable as “Medium High”.

[82] https://jerseyeveningpost.com/news/2019/04/24/fraudster-who-fled-to-bahrain-after-stealing-670k-from-jersey-company-is-finally-jailed/ and https://www.jerseylaw.je/judgments/unreported/Pages/[2019]JRC079.aspx

Integrity of Staff in Securities Firms - High

AML Knowledge of Staff in Securities Firms- Medium High

10.71 The JFSC as part of the Personal Questionnaire (PQs) application process considers the "fitness and propriety" of the key individuals in the case of Regulated Fund Operators and Jersey Public Funds (excluding Unregulated Funds). While Private Funds (JPFs and Legacy Private Funds) and Supported Private Fund Operators are not subject to the regulatory codes (no PQs need to be filed) they will have to have due regard to the AML/CFT Codes of practice. The JFSC may as a result of an enforcement process ban individuals from working in the finance industry.

10.72 Data provided for both 2017 and 2018 shows that there were approximately 6,200 employees reported in respect of FSBs (within organisations who had 10 or more employees). In 2017, 0.12% were reported as having had disciplinary actions for serious misconduct (which may include failings in integrity) taken against them (2018: 0.22%). These statistics would seem to support the Funds NRA Working Group's view that there is a high level of integrity amongst staff in the Jersey funds' industry.

10.73 As far as AML knowledge is concerned, 78% of FSBs/AIFSBs incorporate compliance into all their employees' performance objectives (thus promoting compliance knowledge). The variety of training available is diverse ranging from online training, to in-house seminars and external training (including training providing by professional bodies). However, there are some concerns about the level of specific training tailored to products, the sophistication of the audience and in some cases Jersey requirements. Inadequate CDD training may be where group training or compliance manuals are being used without any gap analysis being done and the training being tailored for the Jersey audience. On a positive note, the JFSC has provided high quality training on specific Jersey AML/CFT issues.

10.74 The Legacy Private Funds and the JPFs with 1-15 investors may have Regulated Fund Operators that are TCSPs or IBs and not FSBs. There is a vulnerability that TCSPs/IBs starting to deal with Funds may not fully understand the differing obligations of the Fund and the Fund Operator. However, the Fund Operators that account for over half the Legacy Private Funds either have a FSB licence or are part of a group where another entity has a FSB licence.

Effectiveness of Compliance Functions (Entity) – Medium High

10.75 While there is evidence that in some firms there are issues with conflicts and compliance culture, as per the public statements and supervision findings, there is evidence of a strong compliance culture permeating all levels of entities. The Finance Sector Survey indicates that for 92% of respondents the, "compliance and risk function are intrinsically involved with business planning and strategy". A key way for this to be done is by industry factoring in compliance as part of staff objectives and 78% of FSBs/AIFSBs indicated they do this in relation to all employees. Consultants, who are often brought in when an entity is struggling with AML/CFT compliance, have commented: "There is a higher level of understanding of AML/CFT requirements in Jersey than in other jurisdictions, and Jersey organisations are more sensitive to reputational risk. There is a view also that organisations here are subject to greater oversight than in the UK".

The views of 10 Funds supervisors were obtained of their impression of the compliance function and they agreed with the score that the working group gave this variable of “Medium High”.

Effectiveness of Suspicious Activity Monitoring and Reporting - High

10.76 All relevant persons are required to submit SARs. In addition, according to responses to the Finance Sector Survey 80% of FSBs/AIFSBs said they had policies and procedures to investigate SARs. Suspicious activities are being identified which demonstrate the effectiveness of monitoring. Generally, the industry is effective at monitoring suspicious activities and filing SARs and therefore this variable is assessed as “High”.

Level of Market Pressure to Meet AML Standards – Very High

10.77 Jersey as a global financial centre has to meet AML standards internationally because of its global client base. From a commercial perspective, Jersey’s priority in the funds sector is maintaining access to global markets by maintaining equivalence with international standards such as FATF.

10.78 Industry locally keeps pointing out that, while Jersey strives to meet AML/CFT to the highest standards, other larger more globally influential jurisdictions don’t appear to. There is a perception in industry that customers view that AML/CFT is applied to a lower standard in other jurisdictions facilitating regulatory arbitrage in relation to AML/CFT. Banks operating in Jersey and globally apply their own group standards to funds and Fund Operators and expect the banks CDD standards to be adopted by funds and Fund Operators which is an additional layer of pressure. Their global group policies and standards adopt the highest standards. For example, a bank might decide globally due to its risk appetite and business risk assessment that it is unwilling to deal with certain jurisdictions or asset classes (e.g. crypto currencies). Global Groups will also, similarly to banks, impose their own global standards which may pose additional pressure on local industry, if they have to align to standardised higher or different requirements.

10.79 The Level of market pressure to meet AML standards is assessed as “Very High”.

SECTION 11

Banking Sector

Key findings:

1. The most material client / services segments include international corporate and retail, private banking and TCSPs.

2. The overall net assessment of ML vulnerability is medium. The components increasing the score are client base profile (non-resident customers) and cross-border nature of business (including transactions);

3. Overall quality of AML general controls is medium-high, informed by an excellent level of market entry controls, comprehensive regulatory framework and supervision, very good knowledge and integrity of banks' staff; however limited availability of independent information sources used for verification of clients' data is an area that requires improvement.

Main characteristics of the Banking sector

11.1 Banks in Jersey are diversified between well-known UK high street banks and global Private Banks. The sector provides traditional services to the local market together with corporate solutions for the investment funds industry and Trust and Company Service providers (TCSPs) such as treasury specialists together with international banking for expatriates and UK resident, non-domiciled clients.

11.2 Whilst the banking sector is mature it has been through a period of consolidation and re-structuring since 2007. At the end of 2018 there were 26 banks in Jersey, of which 6 are subsidiaries and the remainder are branches. Jersey subsidiary banks and branches are subject to supervision by the JFSC and additionally by overseas regulators as the majority are part of group consolidated regulation (incl. UK, other EU countries, North America, Switzerland, Africa and Middle East)

11.3 At the end of 2018, there was GBP 122.8bn of bank deposits in Jersey, down from a peak of GBP 212bn in 2007. Nevertheless, the banking sector remains significant, accounting for just over half of the total financial sector GVA. The jurisdiction is a renowned IFC and predominantly serves bank's non-resident customers.

Regulated activities

11.4 Deposit-takers (banks) also hold a number of additional licences for example, Money Service Business, Investment Business, and Funds Services Business.

Threats in the banking sector

11.5 The Banking sector has been assessed as high in relation to the ML threat to the sector. From the data collected there were 13 ML investigations involving the sector and 21 cases where there was an investigation of a predicate offence only. The JFSC recorded 6 cases that were investigated in this sector. There are 2 recorded ML prosecutions featuring the sector, and 5 convictions listed and the JFSC also have recorded 2 cases where sanctions have been taken by them. Data collected by the FIU using a selection of SAR intelligence where there were typologies of potential ML with intelligence suggesting there was also evidence of a predicate offence. a typology of potential money laundering identified 36 cases where there was intelligence suggesting that there was evidence of a predicate offence. LOD statistics indicate that there were 2 prosecutions of complex financial crime and ML cases. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium and the size of the sector and/or its share in the economy is deemed to be high.

11.6 The average headcount in the finance sector June 2013 to December 2017 statistics was 4,595. Total revenue figures from statistics produced by the States of Jersey from 2017 show the banking sector had an estimated revenue figure of GBP 1,010m. The total number of beneficial owners and controllers reported in the JFSC survey for this sector is in the region of 614,000 and the total number of customers listed is approximately 690,000. Total deposits less overdrafts are GBP 69bn. States of Jersey, Finance and legal sector total Gross Value Added (GVA) for 2017 was GBP 1,7m, the banking sector contributed GBP 850m to that figure which was 48.85% of the overall figure. During the data collection period in excess of 7,800 SARs were submitted by the sector.

Vulnerabilities in the banking sector

Inherent vulnerabilities

11.7 The assessment of ML vulnerability for this sector is medium. It is based on an assessment of inherent vulnerabilities against the level of controls in place, which are viewed as mitigating factors.

Table 11.1 Vulnerabilities' assessment by segment

Segment	Vulnerability	Rating	Score
Local Retail (Under GBP 5m)	Inherent vulnerability	0.43	Medium
	Final vulnerability	**0.35**	**Medium Low**
International Retail (Under GBP 5m)	Inherent vulnerability	0.79	Medium High
	Final vulnerability	**0.57**	**Medium**
Private Banking (Local & International)	Inherent vulnerability	0.75	Medium High
	Final vulnerability	**0.48**	**Medium**
Corporate (Trading)	Inherent vulnerability	0.36	Medium Low
	Final vulnerability	**0.31**	**Medium Low**
Corporate (Large/Global)	Inherent vulnerability	0.72	Medium High
	Final vulnerability	**0.52**	**Medium**

Table 11.2 Summary matrix of inherent vulnerabilities' assessment

Inherent vulnerability factors	Retail			Corporate		
	Local (under GBP 5m)	International (under GBP 5m)	Private Banking (Local & International)	Trading	Large/ Global	TCSPs
10. Total value/ size of product type	Medium	High	Medium High	Low	High	Medium High
11. Average Transaction Size	Low	Low	Medium	Medium	Medium High	Medium High
12. Client base profile of the product type	Low Risk	High Risk	High Risk	Low Risk	Medium Risk	High Risk
13. Existence of investment/ deposit feature for the product type	Available but Limited	Available and Prominent	Available and Prominent	Available but Limited	Available but Limited	Available and Prominent
14. Level of Cash Activity	Medium High	Low	Low	High	Medium Low	Low
15. Frequency of international transactions associated with the product type	Low	High	Medium High	Low	High	High
16. Other vulnerable factors of the product type						
7.1 Anonymous/ omnibus use	Not Available	Not Available	Not Available	Not Available	Available	Available
7.2 Existence of ML Typologies	Exist	Exist and Significant	Exist	Exist but Limited	Exist	Exist
7.3 Use of product/service in fraud or tax evasion schemes	Exist and Significant	Exist and Significant	Exist and Significant	Exist	Exist	Exist and Significant
7.4 Difficulty in tracing records	Easy to Trace					
7.5 Non-face-to-face use of product/service	Available	Available and Prominent	Available	Available	Available	Available and Prominent
7.6 Others such as Delivery of the product/ service through agents	Does Not Exist					
7.7 Availability of Product Specific AML Controls	Exist but Limited	Exist but Limited	Exist & Comprehensive	Exist but Limited	Exist but Limited	Exist & Comprehensive

Retail Banking (<GBP 5m local)

Inherent vulnerabilities

11.8 The total number of individual Jersey resident retail customers of Jersey Bank is

nearly 140,000 (reflecting the fact that some individuals have accounts with more than one bank) with a total deposit balance of GBP 3.5bn[83], A small number of local resident individual customers (c.0.1%) are classed as PEPs by Jersey Banks holding total deposits of c.0.5%. Retail banking clients use typical retail banking services, including paying in and withdrawing cash.

Mitigants

11.9 Due to the small population of Jersey many local clients and their activities are well known to branch staff making it easier to monitor customers' activities and transactions. Cash-related risk is mitigated by certain cash-related controls employed by banking sector, including automated or manual transaction monitoring solutions.

International Retail Banking (<GBP 5m)

Inherent vulnerabilities

11.10 One of the key risks associated with the banking sector in Jersey is its description as an IFC. The deposit takers offer a number of account services for expatriate and UK resident 'non-domiciled' clients who prefer to continue to bank in a transactional manner within a jurisdiction equivalent to the UK that has the facility of tax neutrality. Customers are global in nature and therefore have access to a wide range of products and services remotely. Transactions are global in nature too. Although operational limits are lower, access to cash is still available through debit and credit card offerings.

11.11 Jersey services over 450,000 non-resident retail customers with a total deposit balance of approximately GBP 26bn, of which circa 0.22% are Non-resident PEPs representing circa 2.7% of the total deposit balance.

11.12 Clients in this cohort may not have been met face to face by a local Jersey based staff member. The lack of face to face control has led to a number of frauds being perpetrated.

11.13 Client facing staff/Relationship Managers' focus could be placed on the more valuable client portion of their portfolio, allowing those of perceived lesser value to effectively operate accounts "below the radar" and not be subjected to the same level of scrutiny.

11.14 The majority of deposit taking banks are part of larger groups and Jersey banks constitute just a small part of their global client base thus it could be likely that Jersey-based branches and subsidiaries receive less attention from the group management.

11.15 Increased level of outsourcing has been observed for some AML/CFT support services by banks within the jurisdiction. This is driven by local resource and cost restraints.

Mitigants

11.16 The risk of non-face to face business relationships is mitigated as banks put additional safeguards in place, such as the requirements with regard to certification of identification documents (e.g. by a notary public) and clients being

[83] Using the JFSC data the Banking Sector Working Group deemed retail customers as any deposit holder with a balance of under GBP 5m in Jersey

met face-to-face by a staff member of another group company. In addition, non-face to face business relationship factor is taken into account when determining the scope of CDD.

11.17 Banks within the jurisdiction have committed to both CRS and FATCA standards, it is important that banks have to consider why clients want to book their assets in Jersey and ensure the rationale makes sense from a tax and reputational risk perspective. The majority of the SARs externally reported by deposit takers within Jersey are based around suspicion of tax evasion.

11.18 Outsourcing arrangements typically include continuous oversight and risk assessment, including extensive training, ongoing interaction with Jersey based staff, quality assurance testing, etc.

Private Banking (local & international)

Inherent vulnerabilities

11.19 The Banking Sector working group considered an individual deposit holder with a balance of more than GBP 5m to be deemed as 'Private Banking' client.

11.20 Private Banking clients will typically have a higher risk profile due to their high net worth and 92% are non-Jersey Residents. Private Bank clients typically have a high level of wealth, an ability to diversify this wealth, they can have multiple business dealings across more than one jurisdiction and are more likely to have relationships with people of influence in society. The Private Banking Sector makes available to clients a range of products that may have higher risk elements to those offered to domestic retail clients. The veracity of this segment of customers' source of funds is a challenge for banks together with evidencing the origins of wealth.

11.21 Private banking clients may have private asset holding vehicles (PAHV). PAHVs are designated as potentially posing higher risk and may have complex management and functional organisation (also with regard to ownership structure) with a reach to parent jurisdictions and regional offices. The ability to be able to clearly understand ownership and related control may be a challenge.

11.22 Having Relationship Managers that are not located in Jersey may potentially lead to a higher risk that the local personnel will not have sufficient knowledge of some clients and their activities. There is a risk of non-adherence to the legislative and regulatory requirements which requires effective compliance monitoring to ensure this is controlled.

11.23 Questions of tax avoidance vs tax evasion can further exacerbate a negative perception of the Island in that it may not always be clear to outsiders when avoidance vs evasion has been exercised.

11.24 Mindful of the ongoing attention worldwide where the misuse of public funds has taken place and with reactions against corruption at high government levels, there is increasing responsibility by banks to undertake heightened due diligence for establishing PEPs or public figures source of wealth and investigate sources of funding.

11.25 The banks' risk appetite for certain jurisdictions and business activities of the customers have been determined due to commercial reasons and ability to

manage these relationships, however exceptions can be made and business booked outside of the banks' main risk appetite, particularly to accommodate high net worth private clients and these will pose more risk to the institution.

Mitigants

11.26 Private Banking's higher risk services require both a regulatory framework and individual banks' policies and procedures around those services to be robust. To mitigate the risk associated with private banking clients, banks focus on initial and ongoing client risk assessment which might result in application of enhanced monitoring controls. Trigger events such as a change of employment, country of residency/domicile or material change to net worth would indicate an additional client review is needed and potentially are further up-risking elements.

11.27 Private banking clients have a designated Relationship Manager so normally they will have been met face to face which banks perceive as a mitigant to the risks because of the ability to physically confirm and cross reference identification material. Moreover, Jersey banks have measures in place to ensure that Jersey's AML regime is applied to their customers irrespective of where the relationship manager resides (evidence by business risk assessment reports produced by Jersey banks).

11.28 Jersey has implemented the key directives on tax policy such as CRS and FATCA, in doing so banks have followed suit. This is key as banks have to consider the tax and reputational risk associated with clients looking to book their assets offshore (e.g. Panama and Paradise Paper exposure).

11.29 The mitigation of tax risk is two-fold in that there is the actual tax risk as well as the perception that the jurisdiction is susceptible to tax risk[84]. In terms of perception, that aspect of tax risk may appear to be reducing in Jersey. This may be due to increased regulatory scrutiny deterring bad actors who may initially be attracted to an offshore island due to perception.

11.30 The exercise to update the beneficial ownership information held in the Registry in 2017 has played an important role in increasing transparency of beneficial ownership.

Corporate Banking (Trading)

Inherent vulnerabilities

11.31 The data shows that the overwhelming value of deposits in Jersey banks are from non-Jersey registered companies. However, only 6% of the total deposits relate to non-Jersey personal asset holding companies which suggests that the remainder of these would generally be trading companies.

11.32 Provision of banking facilities to clients in this cohort includes processing of a relatively high volume of cash transactions; for example, Jersey based tourism and hospitality.

11.33 The highest propensity of fraud prosecutions in this segment is perceived to be due in part to the relative ease of identifying and processing frauds in local corporate entities.

[84] https://www.bbc.co.uk/news/world-europe-jersey-48354081

Mitigants

11.34 All banks have procedures and controls in place for monitoring and controlling cash transactions to manage the increased ML risk. In addition, the banks are increasingly charging businesses for cash-based services.

Corporate Banking (Large/Global)

Inherent vulnerabilities

11.35 Jersey Corporate Global/Large Banking segment typically serves multinational/ conglomerate or the larger corporate client base (e.g. financial institutions, global banks, funds and insurance clients generally affiliated or subsidiaries of global 'blue chip' companies).

11.36 The Large/Global Corporate Banking Sector makes available to clients a range of products that may have higher risk elements to those offered to the smaller to mid-sized domestic businesses. Typically, these are: Account Bank and Escrow Services; Term Deposits; Loans and other credit products; Treasury services; Cash management services; Equipment lending; Commercial real estate; Trade finance and Employer services.

11.37 Clients typically include a number of financial institutions that outsource operations in relation to AML/CFT to both group and third-party providers increasing the probability that oversight and control over outsourced functions is not sufficient.

11.38 A risk associated with a Large/Global Corporate Banking relationship is that an unscrupulous corporate client may seek to conduct some form of illicit activity behind a Jersey bank's reputation, compromising that bank's franchise and that of the jurisdiction. The risk increases with some private companies and structures (complex structures, companies with capital in the form of bearer shares, special purpose vehicles registered in offshore, etc.) wholly or partially by individuals or syndicates with the objective of undertaking business based on criminally derived funds and operations; and/or with the objective of co-mingling legitimate and illegal business operations and funds.

11.39 Large corporate institutions may have a provenance and well-documented history and source of wealth; however, potential risks remain to some verifications of that source of wealth, identification and verification of identities and checks regarding political and other exposures that would otherwise put the Large/Global Corporate Banking sector and jurisdictional franchise at risk.

11.40 Whilst most Jersey Banks do not provide tax advice per se, tax efficiencies are probably a common motivation for the use of offshore vehicles.

Mitigants

11.41 Some client relationships are drawn from 'trusted entities', and/or those companies publicly-traded on a recognised-exchange and/or regulated companies. This brings advantages in that such a client base is subject to additional levels of regulatory obligation and scrutiny.

11.42 Banks have comprehensive controls to assess risks associated with high risk

jurisdictions; for the purpose of this risk assessment, the following factors are being taken into account, e.g. economic profile, political system, system of taxation, particular risks posed by doing business in/with the jurisdiction; this with an emphasis on the threat of exposure to corruption, ML, TF, TFS, etc. Where the banker is located in the region/country of the client's activity, this segment may additionally place a degree of reliance on that banker to have the local market knowledge in assessing the jurisdictional risks.

11.43 Banks developed measures that enable them to understand the legitimate rationale for the use of a service and establish a client profile which is typically documented. This enables them to carry out monitoring of customer activities in a more efficient manner. Where there is no taxation motive evident in using the services available for this segment then consideration is given as to what advantage the client is seeking to obtain, including whether that advantage is reasonable, legitimate and attainable.

Corporate Banking (TCSPs)

Inherent vulnerabilities

11.44 The pooling of funds is a common feature of this specific segment and is an area that is considered vulnerable to ML/FT risk.

11.45 Industry risk in this client segment relates primarily to source of wealth for ultimate beneficial owners in respect of wealth structuring vehicles. The increasing sophistication of clients in this segment means greater complexity of ownership structures. In addition, there will be a higher propensity of clients with political exposure (vs. say the local retail segment), and this again will link to positions held by ultimate beneficial owners and key connected parties.

11.46 Banks apply simplified due diligence in respect of pooled accounts as permitted by legislator requirements by placing reliance on third parties (reliance placed either on other parts of the banking Group, or where reliance is placed on a third-party TCSP).

Mitigants

11.47 The vast majority of trust deposits held is for trusts with Jersey trustees, that fall within the Jersey regulatory regime and none of these trusts have any relevant connections to an enhanced risk state.

11.48 Simplified due diligence is generally only applied to standard or low risk clients and is not permitted in higher risk circumstances.

11.49 When reliance on third parties is placed for CDD purposes, banks typically obtain written assurances from the TCSP that it has applied identification measures in accordance with legal requirements and will provide identification documents immediately upon request. Banks have designed procedures for placing reliance on third parties (such as TCSPs). Such controls include performing ongoing monitoring and reviews (which may be either desk based or on-site visits or a combination of both) following a risk-based approach and reporting findings to the board and/or senior management. Where the banks identify issues, they ensure the obliged person completes a remediation programme and in instances where this will not satisfactorily resolve the matter, there are examples

where the obliged person has been asked to terminate the relationship.

11.50 Banks typically maintain list of industries (e.g. business activities) and geographies (e.g. the location of the ultimate beneficial owner or connected parties, or the geographic nature of source of wealth) which they deem to present a higher risk of ML and FT. Where industry or geographical risk factors are identified, clients will be classified as high risk and subject to enhanced due diligence and ongoing review and monitoring.

11.51 Politically exposed clients are subject to stringent assessment and monitoring by Banks, including regular assessment, adverse media screening and the updating of core due diligence information.

11.52 Controls exist to ensure that true beneficial ownership is understood, and tax risk is mitigated.

AML Control Vulnerabilities Variables

11.53 Quality of AML general controls' is deemed to be 'Medium-High'.

Table 11.3 List of Control Vulnerabilities Variables

Control Vulnerabilities Variables	Assessment Rating of the Banking Sector	Banking Score
1. Comprehensiveness of AML Legal Framework	Very High	0.8
2. Effectiveness of Supervision Procedures and Practices	Very High	0.8
3.Availability and Enforcement of Administrative Sanctions	High	0.7
4. Availability and Enforcement of Criminal Sanctions	Medium High	0.6
5.Availability and Effectiveness of Entry Controls	Close to Excellent	0.9
6. Integrity of Banks' Staff	Close to Excellent	0.9
7.AML Knowledge of Banks' Staff	Very High	0.8
8. Effectiveness of Compliance Systems	High	0.7
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium High	0.6
10. Level of Market Pressure to Meet AML Standards	Very High	0.8
11. Availability and Access to Beneficial Ownership Information	Medium High	0.6
12. Availability of Reliable Identification Infrastructure	Medium High	0.6
13. Availability of Independent Information Sources	Medium	0.5

Comprehensiveness of AML legal framework

11.54 AML/CFT legislation and supporting framework in Jersey is assessed as very high. There are additional preventative measures in place to mitigate the risks associated with non-resident customers; AML Handbook serves as additional guidance for banks. Banks are engaged in regular education and training programs; invest in technologies that help them to comply with AML/CFT requirements, etc.

Effectiveness of supervision/oversight activities

11.55 The JFSC is a unitary authority where supervision of the banking sector covers anti-money laundering, conduct of business and prudential matters. The appropriate rating for the effectiveness of supervision and oversight of activities is assessed as Very High in the banking sector.

11.56 During the period 2013-2018 banks participated in several examinations that have specific AML/CFT and financial sanctions themes[85]. It was concluded that banks in Jersey were well advanced in implementing AML/CFT and financial sanctions and controls. It was suggested that this was due to the considerable focus given by parent groups as a direct result of regulatory scrutiny and action taken worldwide.

11.57 The feedback from the Government Survey for 'Supervision and enforcement of AML/CFT requirements by the JFSC' was in line with the view of representatives from the banking sector team at 'Very High'.

Availability and enforcement of administrative and criminal sanctions

11.58 The view of the banking sector team is that availability and enforcement of administrative sanctions is high, however when it comes to the application of criminal sanctions this is seen as medium high. The main driver for this is the recent adoption of the civil penalty regime by the regulator and the lack of convictions.

11.59 The JFSC uses many administrative sanctions to ensure remediation occurs. Public statements are also seen as an effective deterrent given that reputation is critical for an Island community. The civil penalty regime needs to be used in order to set a benchmark for industry. Additionally, the scope of the regime could be widened to ensure senior individuals are captured i.e. those not key and principal persons.

11.60 There is a lack of published feedback in relation to enforcement of administrative or criminal sanctions and this, coupled with the current gap of an available AML/CFT risk assessment for the Island, makes it difficult for financial institutions to understand trends or risk tolerances in this space.

Availability and effectiveness of market entry controls

11.61 The licensing policy which was revised in 2014 prioritises effective AML/CFT controls at the point of entry. National legislation provides for detailed registration requirements, including the requirement for a branch operation to have an appointed senior officer responsible for ensuring compliance with the terms and conditions of registration, the appointment of which is subject to the JFSC's 'no objection' regime has to be approved by the JFSC. An example was provided by the JFSC where a person applying for such a position was objected to on the grounds that the basis of their application was questionable, especially regarding their academic qualification.

Integrity and AML knowledge of entity staff

11.62 The total number of bank employees in the sector is over 4,500 which makes up

[85] https://www.jerseyfsc.org/banking-business/on-site-examinations/

about 30% of the total financial sector employees. Data shows that in both 2016 and 2017 about 1.4% of employees were subject to disciplinary actions.

11.63 Integrity of bank staff and standards is seen as very high. Under the deposit-taking codes of practice there is a requirement for a registered person to ensure that its directors, senior managers and all other employees are 'fit and proper' for their roles. A guidance note was issued by the JFSC in relation to Integrity and Competence in July 2018[86]. All banks maintain policies in relation to anti-bribery and corruption and conflicts of interest.

11.64 Knowledge of AML within the banking sector is considered 'high'. Banks' employees receive initial and periodic AML/CFT training.

Effectiveness of compliance functions (entity)

11.65 Compliance functions in the jurisdiction's banking sector are assessed as effective at a 'high' level. This was supported by the views of banking supervisors who identified good levels of expertise amongst Key Persons, and a mature approach to remediating issues when they do arise. Supervision data shows that on average staff employed within the compliance function made up 14% of entities' total employees.

11.66 Banks have adopted the three lines of defence model with the majority ensuring there is a definitive split between the first line (front line) and second line (Compliance and Risk). Banks are under the scrutiny of Internal Audit functions, deemed the third line. Internal audits are used as a tool with which to test the effectiveness of the roles and responsibility of the compliance functions. In addition, external help might be sought by the banking sector to test overall level of effectiveness of compliance functions.

11.67 The JFSC monitors a level of assurance around AML matters and follows up with entities where there are concerns[87].

11.68 A growing trend that supervisors have noticed is for banks to outsource some of their AML/CFT related activities to dedicated 'centres of excellence'. The JFSC also updated its Outsourcing Policy in March 2017 which was followed up by an examination across the whole industry, including banks, in Q1 2019.

11.69 The future of screening is also under development with several banks linking in with their parent companies' programmes which are currently considering and testing artificial intelligence (AI) solutions to improve the accuracy of hits for screening and overall rate of SARs.

11.70 On the whole there is a high level of effectiveness of the compliance function within the banking industry.

Effectiveness of Suspicious Activity Monitoring and Reporting

11.71 The banks make a significant number of the jurisdiction's SAR reports. This is perceived to be due to group focus on AML/CFT training previously mentioned, combined with the high level of media coverage given to any banking group subjected to regulatory fines.

11.72 The data shows an externalisation rate of around 54%. It is noted that generally

[86] https://www.jerseyfsc.org/media/2051/2018-07-19-guidance-note-on-integrity-and-competence.pdf

[87] An example is where JFSC sought assurance around quality and timeliness of SAR reporting in Q1 2019 as a result of Supervision footprint data.

the more customers an entity has, the more SARs it files. It is also worth noting that entities with lower customer numbers tend to externalise more SARs.

11.73 It is generally accepted by the sector that a large majority of SARs filed are related to tax suspicions, however data in relation to the reason for disclosure was unavailable for scrutiny. Whilst it is part of the SAR form, it is not in a retrievable format from the JFCU. This would be valuable to the sector to enhance the feedback material and support the creation of typologies.

11.74 Monitoring practices amongst banks vary and include daily and regular screening of PEP, sanctions list, monitoring scenarios based on customer risk group, etc. Best practice was determined to be banks that performed daily re-screening of all customers and associated parties against the full range of financial sanctions, PEP and other risk categories.

11.75 Based on this our conclusion is that SAR monitoring and reporting is assessed at an effectiveness level of 'medium-high'.

Level of market pressure to meet AML standards

11.76 According to the supervision data there are 2 deposit-takers within the jurisdiction that provide correspondent banking services, so there is a very small exposure within the jurisdiction.

11.77 On investigation of the activity relating to correspondent banking, one is a branch of a UK entity that services a branch of the same UK entity that is based in the Falkland Islands. The activity is limited to settling the debit card activity of the Falkland Islands branch. This is considered low risk activity and has minimal impact within the jurisdiction and therefore our score is High.

Application of customer due diligence measures

Availability and Access to Beneficial Ownership Information

11.78 The banking sector has a good understanding of the requirements in relation to who owns and controls a legal person, the structure, and what identification and CDD measures are required. Banks have compliance monitoring in place to assess the effectiveness of this practice where they are reliant on TCSPs or fund businesses. Supervisory data shows that banks' staff are skilled in assessing complex structures and identifying beneficial owners and controllers.

11.79 The majority of beneficial owners and controllers are assessed as posing standard risk by banking sector. Supervisory data shows that the majority of Banks also consider other risk factors to support the ML/FT risk assessment when deciding upon a risk rating such as, inter alia, credit, product, jurisdiction, reputational, environmental and delivery channel (i.e. face to face or non-face to face).

11.80 There were instances where banks hold pooled accounts for Property Managers and did not hold sufficient customer due diligence. In the wider context this is not considered to be a material issue.

11.81 In response to a question in the government survey which asked deposit takers 'is adequate, accurate and up-to-date information on the structure and beneficial

ownership and control of legal persons or legal arrangements available and accessible in a timely manner, the results below were reported:

Table 11.4

Always	38%
Very Often	56%
Never	6%

11.82 The 6% related to 1 bank which was also the only respondent to answer 'never' across all sectors represented. When discussed with the banking sector working group it was perceived that the response of "very often" by 56% indicated that while the information is generally available there is the odd occasion when it is not accessible in a timely manner; 38 % responded that information was "always" accessible.

11.83 The overall score of this section is 'medium-high' for effectiveness.

Availability of Reliable Identification Infrastructure

11.84 Due to the nature of the banking sector client base (local residents and international residents) the area of reliable identification infrastructure could be improved as there is no local database for identification verification.

11.85 Consequently, deposit takers are strict in terms of identification and address verification measures used. Some are criticised for not making use of simplified due diligence measures available particularly for local residents, and this is usually a result of group policies and procedures being at a standard higher than is required by the Handbook. However, the banking sector working group reported this strict approach means there is a low likelihood of fraudulent documentation being used to verify identity.

11.86 Additionally, industry relies on other parts of their group to meet with customers to provide ID documentation and address verification. Where non-group introductions were seen there is a heavy reliance placed on notary public verification. The photocopied documentation must confirm that it is a true copy of the original and be signed and dated by a suitable certifier which is subsequently verified by bank staff using independent checks. Supervisory findings suggest that no material issues have arisen in respect of identification.

11.87 The assessment of this section is considered 'medium-high'.

Availability of Independent Information Sources

11.88 All banks use screening tools for on boarding and ongoing monitoring purposes. For verification, Banks rely on customers to provide supporting documentation such as original bank statements, payslips, utility bills and employee references. The veracity of these documents could be questioned.

11.89 The government survey showed that deposit takers struggle to identify fraudulent identification and verification documents. 18% of respondent banks used a credit reference agency to provide additional secondary comfort, but not for primary verification.

11.90 In conclusion this section was assessed as 'medium'.

SECTION 12

Investment Business

The assessment of ML risk for this sector is: Medium High

Key findings:

Wealth management sector's exposure to ML risk is higher than that of the independent financial advisors: the sector is large, with the majority of clients being international (non-Jersey based), mostly HNWI.

ML threat in the Securities Investment Business sector is medium/high. There is 1 recorded ML prosecution featuring the sector, and 1 conviction listed; sectorial typologies relate to fraudulent activities (incl. through use of unauthorised products or firms), market manipulation, conflict of interests, Insider Trading or Securities Fraud.

The overall net assessment of ML vulnerability is Medium High. Overall quality of AML controls informed by a good level of market entry controls, supervision, regulatory framework and integrity/knowledge of the staff of Investment Businesses. Application of administrative and criminal sanctions for AML breaches, as well as SAR reporting practices and compliance arrangements in smaller firms are the areas that require improvement.

Overview of the Investment Business sector

12.1 The activity of Investment Business (IB) covers a diverse range of businesses, including local Independent Financial Advisers (IFAs), niche Wealth Managers and investment banks with a global presence. There are 5 classes of Investment Business under the FS(J) Law, namely: (1) Dealing in Investments (Class A); (2) Managing Investments (Class B); (3) Giving Investment advice when not prevented from holding client assets by virtue of a condition of registration (Class C); (4) Giving investment advice when prevented from holding client assets by virtue of a condition of registration (Class D); (5) Investment business carried on only with respect to funds which would be funds within the meaning of the Collective Investment Funds (Jersey) Law 1988 but for the fact that they do not, and do not intend to, acquire capital by means of an offer to the public of units for subscription, sale or exchange as described in that Law (Class E)[88].

12.2 As at 31 December 2018 there were 82 registered IBs with the total number of beneficial owners and controllers reported as 58,887 and the total number of customers reported as 79,282. 2018 data include total assets under management (or equivalent measure) of: (i) Class A custody GBP 68,237m; (ii) Class B managing GBP 23,081m, (iii) Class C and D advising GBP 22,703m (this is the value of funds advised on - no ongoing asset management). In 2018, the investment business sector had an estimated revenue figure of GBP 240m (investment advice).

[88] There is only one IB that holds Class E (non-exempted functionaries) which is also an FSB Managed Entity regulated for Fund Services Business

12.3 Many investment businesses are also registered to undertake other financial services business.

Table 12.1 Overview of investment businesses

IB Class	Total	with Banking licence	with FSB licence	with TCB licence	with GIMB licence	Total number 2018	with Banking licence	with FSB licence	with TCB licence	with GIMB licence
A	8	2	2	1	-	7	2	3	1	-
A + B	1	-	-	-	-	1	-	-	-	-
A + B + C	40	13	24	5	3	38	11	24	4	2
A + C	9	3	6	1	3	8	3	6	1	3
B	3	-	1	-	-	3	-	1	-	-
B+ C	1	-	1	-	-	1	-	1	-	-
C	1	-	-	-	-	1	-	-	-	-
D	21	-	-	1	5	22	-	1	1	5
E	1	-	1	-	-	1	-	1	-	-
Total	85	18	35	8	11	82	16	37	7	10

Regulated activities and exemptions

12.4 Every IB] that holds a registration certificate from the JFSC (licence) is a financial service business under the FS(J) Law and subject to AML/CFT requirements. However, there are over 25 Investment Business Exemptions some of which result in an exemption from the AML/CFT requirements. These exemptions are being reviewed as part of a wholesale review of the scope of the Island's AML regime.

Threats in the Investment Business sector

12.5 The assessment of ML threat for this sector is: Medium High.

12.6 From the data collected there were no ML investigations involving the sector and the JFSC recorded no cases that were investigated in this sector for AML/CFT failures. There is 1 recorded ML prosecution featuring the sector, and 1 conviction listed. The JFSC have no recorded cases where sanctions have been taken by them. Data collected by the FIU using a selection of SAR intelligence where there was a typology of potential money laundering, identified 2 cases where there was intelligence suggesting that there was evidence of a predicate offence. LOD statistics indicate that there was 1 prosecution of complex financial crime and ML case. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium and the size of the sector and/or its share in the economy is deemed to be medium/high.

Vulnerabilities in the Investment Business sector: overview

12.7 The assessment of ML vulnerability for this sector is: Medium High (0.6)[89].

[89] Using the World Bank tool, the most apparent difference in risk rating was between Class D –Independent Financial Advisers (IFAs) who cannot handle customer monies versus Class A, B and C who can handle customer monies. In 2017 and 2018 there was only 1 standalone Class C (providing investment advice while permitted to handle client monies). In 2017 and 2018 the rest are principally as a combination of Class A, Class B or Class A and B. Therefore, IBs holding Class A, B or C or a combination are analysed together as "Wealth Managers".

12.8 The investment business sector has been considered in two parts: (i) services provided by IFAs; and (ii) Wealth Managers, and the inherent product vulnerability has been reduced by the control vulnerabilities. The final vulnerability is set out in Table 12.2 below:

Table 12.2 Summary of inherent and final vulnerabilities' assessment

IFA	Final Service Vulnerability	Medium Low	0.25
	Inherent Service Vulnerability	**Medium Low**	**0.31**
Wealth Manager	Final Service Vulnerability	Medium	0.58
	Inherent Service Vulnerability	**High**	**0.85**

12.9 The services provided by IFAs are generally considered lower risk because they are provided to Jersey residents. Whereas the services provided by Wealth Managers are higher risk because they are provided to customers worldwide, but the controls in place are sufficient to significantly reduce their risk.

Table 12.3 Inherent vulnerabilities (IFAs and Wealth Managers)

Inherent Vulnerability Variables	IFA	Wealth Managers/ Non IFA
1. Total value/size of institution type	Low	High
2. Complexity and diversity of the portfolio of the institution type	Low	Medium
3. Client base profile of the institution type	Very Low Risk	High
4. Existence of investment/deposit feature for the institution type	Available	Available and Prominent
5. Liquidity of the portfolio of the institution type	High	High
6. Frequency of international transactions associated with the institution type	Low	Medium High
Other vulnerable factors of the institution type		
7.1 Anonymous/omnibus use	Available but Limited	Available
7.2 Existence of ML Typologies	Exist	
7.3 Use in market manipulation, insider trading or securities fraud	Exist but Limited	
7.4 Difficulty in tracing records	Easy to Trace	
7.5 Non-face-to-face use	Available but Limited	Available
7.6 Level of cash activity	Does not Exist	
7.7 Availability of Specific AML Controls for Investment Business	Exist & Comprehensive	

Existence of ML Typologies

A. Reliance on third parties and introducers

12.10 In 2016, the UK FCA published a warning regarding authorised firms accepting business from unauthorised introducers where they exercise inappropriate influence and influence the final investment choice. The warning was particularly aimed at where "…advice involves the movement of pension pots to unregulated, high risk, illiquid products whether based in the UK or overseas and outlined how an introducer may make the referral and provide all the customer take on documentation completed for the customer, including the customer's clear investment desire.

12.11 Data collected from the IB sector shows that referred business does occur in Jersey with 40% of the referrals in 2017 and 2018 being from lawyers, accountants and TCSPs

B. Unauthorised Firms and/or Unauthorised Products

12.12 Investment businesses may be targeted by scammers promoting fraudulent investment products. There continues to be evidence of unauthorised investment businesses operating in Jersey. Since 2015 the JFSC has issued 22 public statements[90] warning about scams of which 12 partially relate to investment scams. (These are available from the JFSC's website).

C. Products used for a fraudulent purpose and/or Investment Advisers acting inappropriately and/or fraudulently

12.13 In 2018, a former financial adviser (director of the regulated investment business Lumiere Wealth Limited) was found guilty of more than a dozen charges of fraudulently inducing clients to invest in a fund which was later exposed as a Ponzi scheme[91]. He was sentenced to 7 years imprisonment[92] and received a confiscation order in the sum of GBP 785,182.06.[93]

D. Conflicts of interests and dominant influence

12.14 IBs focus on getting the best returns for their customers but they also inevitably act in the best interests of their own shareholders.

12.15 No IB had a parent that was either a private equity/fund or a law firm. From the data presented, approximately 66% of the IBs have a parent company that is a regulated financial service provider, of which 50% are banks. The remaining 33% are largely owner managed.

12.16 The fact that 2/3 of the investment businesses responding are owned by a regulated entity can be viewed positively as they will understand the need for compliance with AML/CFT requirements (incl. group-wide). However, the majority of IFAs are owner managed, therefore effective corporate governance, oversight and control, management of conflicts is particularly important in these firms.

12.17 In 2018, the JFSC published a public statement relating to a person who was the CEO of the Horizon Group and the majority shareholder of Horizon Trustees (Jersey) Limited (HTJL). Under his influence, the customers monies were invested into another film company set up by Beatle George Harrison in a bid to rescue it from financial ruin. A former Jersey financier has been banned from working in the industry.

E. Verification of Source of Wealth/Funds

12.18 In January 2015, the Government of Jersey published a report on "Money Laundering Typologies & Trends"[94]. Cases focussed on the source of funds

[90] As at 31 January 2019

[91] Financial adviser induced clients to invest in the Providence fund, a high-risk Guernsey based fund involved in factoring in Brazil. He did so by giving misleading assurances as to it being a 'safe' fund. He also concealed its high-risk nature and the fact that Providence was the majority shareholder in his firm and that he stood to benefit personally from investments into the fund. Aggravating features were breach of trust; victims included both elderly and vulnerable clients; attempts to cover his tracks by forged documents on client files and false information provided to the JFSC.

[92] https://www.jerseylaw.je/judgments/unreported/Pages/[2018]JRC221.aspx

[93] https://www.jerseylaw.je/judgments/unreported/Pages/[2019]JRC047.aspx

[94] https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/R%20Money%20laundering%20typologies%20and%20trends%20Jersey%2020150115%20LB.pdf

being linked to bribery and corruption and PEPs. Although IBs know their customers well through undertaking the suitability tests for investments and conducting CDD, they take comfort, however, when a customer is referred to them by a business subject to AML/CFT requirements[95] or funds are received from a regulated source such as a bank believing that they have passed AML/CFT checks already.

12.19 However, just a small proportion of IBs use reliance. The JFSC Data shows that in 2017 only 21% of IBs relied on a regulated third party and 11% relied on another member of their group to conduct verification in relation to its customers.

12.20 High Net Worth investors have diverse and varied holdings to spread risk, this means proceeds of crime may be mixed with funds derived from a legitimate income making it difficult to identify/suspect criminal origin of funds. Also, the difference between source of wealth and source of funds is not always well understood by IBs.

Use in Market Manipulation, Insider Trading or Securities Fraud – exist but are limited

12.21 Market manipulation, insider trading or securities fraud are limited.

12.22 During the period 2016 to 2018 the JFSC considered 22 cases involving insider dealing or market manipulation. Of these, 12 originated as a result of requests for assistance and 10 originated from SARs being filed. All bar 1 were referred to the JFCU for investigation.

12.23 There are no organised securities trading exchanges in Jersey; however, Jersey could be used to facilitate insider trading via brokerage accounts or conceal the proceeds of insider dealing, IBs knowing their customers, their transaction profile and establishing their source of wealth/source of funds should prevent this.

12.24 IBs solely with an Execution-only licence (Class A, dealing), who can trade for customers, are vulnerable to facilitating market manipulation. As at 31 December 2018 only 8% of the IBs solely held an Execution-only licence. IBs that hold Class A licences in conjunction with other classes such as Class B (managing) and Class C (advising), tend to undertake Execution-only trades as part of their overall wealth management offering and don't provide a standalone trading service. Most IBs have a white list of investments and don't facilitate a customer investing in a "club" type investment.

12.25 In 2013, the JFSC assisted the US SEC in bringing charges against an Investment Banker in relation to Insider Trading (Securities and Exchange Commission v Richard Bruce Moore). Mr Moore had used brokerage accounts located in Jersey.

Difficulty in tracing records – Easy to Trace

12.26 CDD and transaction records kept by IB's are easy to trace. Partly due to more intense ongoing business relationships with their customers due to the requirement to advise them on suitability of investments (save in the case of Class A, dealing). 87% of surveyed IBs responded that they could either always access (51%) or very often access (36%) adequate, accurate and up to date information on the structure and beneficial ownership of their customers in a timely manner.

[95] Responses to question N8 of the JFSC 2017 data collection exercise shows referrals being made to Investment Businesses the origin o f which includes lawyers, accountants and TCBs.

Level of Cash Activity – Does not Exist

12.27 Cash transactions are not prevalent in the sector. The JFSC 2017 and 2018 data Collection Exercises confirmed that the IBs do not receive physical cash (notes and coins).

Availability of specific AML controls for IBs – Exist & Comprehensive

12.28 An IB is a relevant person pursuant to the MLO which imposes AML/CFT requirements on its relationship with its customer. The AML/CFT handbook provides guidance upon how to meet AML/CFT requirements in relation to customers, analysing the requirements in relation to individuals, legal persons and legal arrangements.

Vulnerabilities of IFAs and Wealth Management

IB – Independent Financial Advisors (Class D only)

12.29 Class D IB, known as Independent Financial Advisors (IFAs), provide investment advice without holding customer monies. Under the regulatory regime it is not possible to be a sole trader IFA in Jersey.

12.30 Total value/size of IFAs sector present low risk.

JFSC data collected in respect of 2017 highlights that the 18 IFA respondents had nearly 14,000 customers with assets under advice of GBP 1,925bn which equates to an average investment of GBP 138,000 per customer; in 2018 the data showed 18 IFAs with nearly 15,000 customers, with assets under advice of GBP 1,711bn equating to an average investment per customer of GBP 114,000.

Customer's vulnerability

12.31 Client base is considered very low risk. Over 90% of IFA's customers are Jersey residents' natural persons known personally to the IFAs and 90% are classified low risk. Vast majority of customers are retail customers, professional customers amount to less than 1 %.

12.32 Approx. 25% to 28% of non-Jersey customers were subjected to EDD measures. Customers connected to PEPs amount to less than 0.4%. No jurisdictional information was requested for the PEPs in sector specific JFSC Data Collection Exercises.

12.33 The fact that customers trust and rely upon their IFAs is a vulnerability, where the IFAs do not adhere to the conduct requirements in the IB Code of Practice and professional standards. In 2017 the JFSC ran a miss-selling campaign[96] to mitigate this vulnerability.

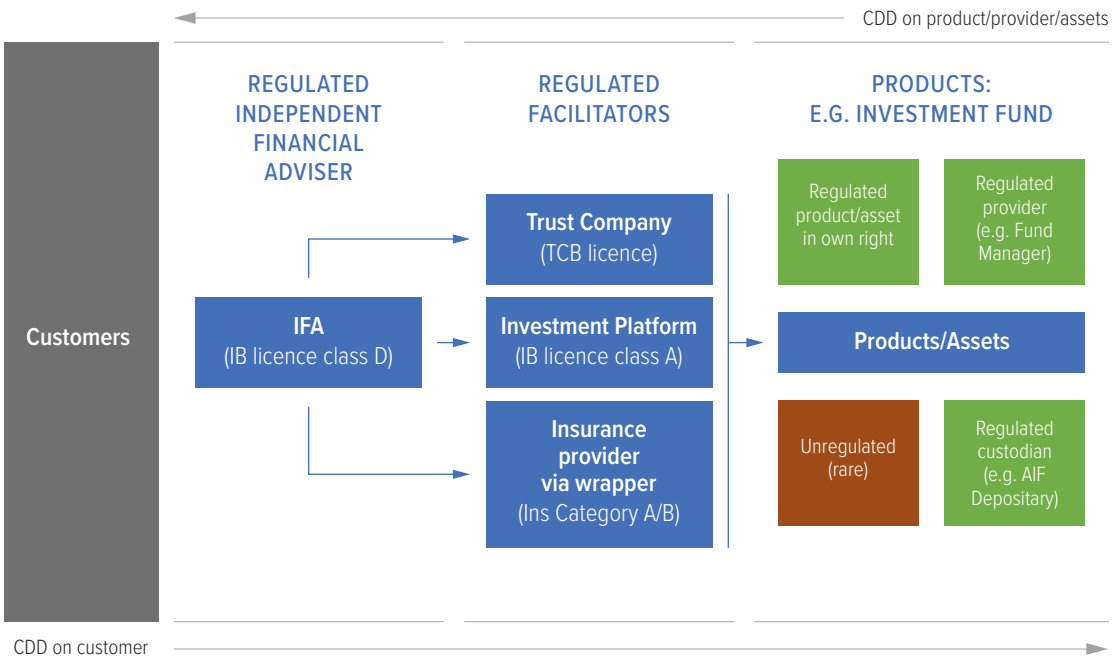
Investment/ Product Vulnerability

12.34 IFAs provide investment advice that is related to retirement, savings for children's education, an inheritance or similar. There are broadly two types of services that IFAs offer: long-term insurance-based products (35%) and longer-term financial planning advice services (65%, 50% of which relates to pensions).

[96] https://www.jerseyfsc.org/the-commission/investor-education/investment-mis-selling-campaign-2017/

12.35 The IFAs facilitate investment through regulated firms as shown in the diagram below:

Diagram 12.1



12.36 It must be noted that IFAs may recommend that their customers invest directly into a product not via Regulated Facilitator, but this is considered to be rare. IFAs also undertake unregulated business, such as mortgage advice, retirement planning, investment in collectibles (e.g. stamps) and buy to let property, however, scope of these activities is usually small.

Other vulnerabilities

12.37 Liquidity assessed as high due to the constitution of the advised portfolios mainly consisting of liquid assets, the limited ability of the customers to control their own investment and given the small proportion of the IFAs' business dealing with insurance protection products.

12.38 International transactions assessed as low risk. 90% of IFAs' customers are Jersey individuals; very few international transactions.

12.39 Use of omnibus/pooled and anonymous accounts is not possible due to the nature of IFAs business.

12.40 Non-face to face business relationships are available but limited, amounting to less than 1%.

Investment Business – Wealth Managers (Classes A, B and C)

12.41 The main distinguishing feature between IFAs and Wealth Managers is that these entities can hold customer money. In 2018, 59 Investment Businesses held a registration to carry on one or more services of Class A, B and C. Some of the Investment Businesses have multiple licences for example, 27% of the wealth Managers have a banking licence.

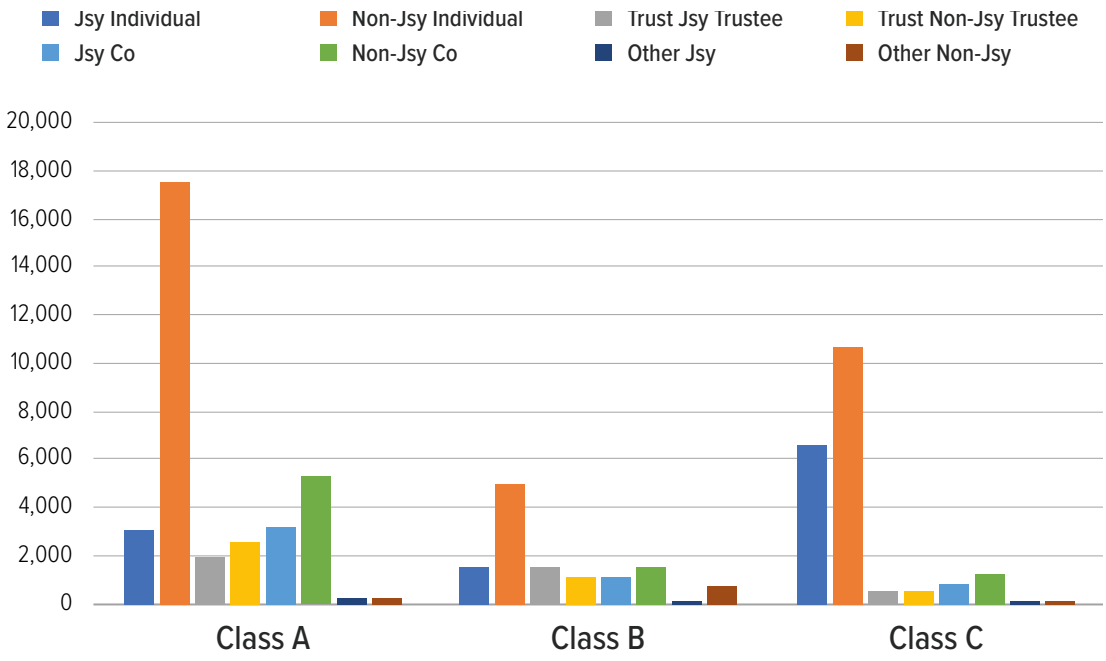
12.42 Total value/size of Funds management sector present high risk. In 2018 Wealth Managers dealt with customer assets worth GBP 112bn, have approximately 67,000 customers and represent three quarters of the Investment Business Sector.

Customer's vulnerability

12.43 Client base in Wealth Management is considered high risk. The client base of Wealth Managers is predominantly HNWI non-residents, the majority of whom are met face to face and over 80% are standard or lower risk. However, some of these customers have connections to enhanced risk states and some of the customers are personal asset holding vehicles.

12.44 The majority of the Wealth Managers have non- Jersey customers; customers are predominantly individuals (66% in 2018). 75% of Wealth Managers' customers are reflected in the data as retail clients – this is the categorisation applied by the investment businesses as it affords their customers the greatest level of protection from a conduct of business perspective. 2018 data shows that there were in total nearly 34,000 customers in Class A; just over 12,500 in Class B and approximately 20,000 in Class C.

Diagram 12.2



12.45 Geographical spread. The JFSC data shows details of the countries linked to customers who were individuals, beneficial owners and controllers (BOCs) of customers and the countries of customers on whose behalf a third party (TPs) acts. Approximately 66,500 connections were reported in 2017 and 2018. The following countries were reported to have a connection of over 2% and up to 27.5% of the total: UK, Jersey, UAE, South Africa, Guernsey and the Isle of Man.

12.46 Enhanced CDD and PEPs. The MLO requires the application of EDD in a number of circumstances, when a customer: (i) has a relevant connection to an enhanced risk state; (ii) is a PEP or there is a connection to a PEP; (iii) is non Jersey resident;

(iv) is not physically present for identification purposes; (v) is a personal asset holding vehicle; (vi) presents a higher risk of ML. However, not all these types of customers were reported to the JFSC as being subjected to EDD measures. The NRA IB working group consider this might be due to the fact that the majority of wealth management clients are non-resident therefore EDD, as described in the MLO, is applied as standard CDD for a non-resident clients. EDD is recorded when other high-risk factors are present and additional EDD, above EDD required by the MLO, is applied.

Investment/Product vulnerability

12.47 Complexity of the product is assessed as medium. Wealth Managers provide a mix of discretionary management and advisory services. Whereas IFAs advise customers what investments to invest in via platforms, Wealth Managers use platforms to pick different assets to create a model following an investment strategy which they actively manage for their customers. The Wealth Managers may be able to purchase products not provided via a regulated facilitator, e.g. access directly to hedge funds, real estate funds and private equity funds. Wealth Managers from a fiduciary risk perspective are unlikely to pick products that are either unregulated or have no link to a regulated provider.

Other vulnerabilities

12.48 Investment/deposit feature in services is available and prominent.

Classes A, B and C can all handle customer funds and place funds in the financial system.

12.49 **Liquidity of portfolio is high.**

While the customer's investment with a Wealth Manager is held for a lengthy period, the investments in the underlying portfolio may frequently change. An average percentage for easily tradeable assets in a portfolio is 80%90%. Clients can choose to hold their portfolios in highly liquid assets.

12.50 **International Transactions assessed as medium high.**

Significant proportion of transactions are cross-border, as 70% of customer base are non-resident customers.

12.51 **Use of omnibus/pooled and anonymous accounts is available.**

Where IB's provide financial services to regulated entities, they may not be required to verify the identity of all the underlying investors or beneficiaries (the MLO permits the application of simplified DD measures on third parties in this case). The identity of the underlying customer will be known to the regulated entity.

12.52 **Non-face to face business relationships are available.**

Even though Wealth Managers have many non-Jersey customers the majority of them will be met face to face, by: (i) the customer visiting Jersey; (ii) the investment business employee visiting the customer; or (iii) the customer meeting the investment business employee in the country office or branch of the Wealth Manager where that customer lives (often used by banks). Data from

2017 and 2018 shows a reduction in the number of non-face to face business relationships: Class A significant reduction form 21% in 2017 to 6.4% in 2018; Class B slight reduction from 3.2% to 3.1%; and Class C significant reduction from 2.6% to 0.4%.

12.53 The overall score for the quality of general AML controls taking into consideration all the scores for the variables below was medium high (0.6)

Table 12.4 List of Control Variables

Name of Control Variable	Score	Score
1. Comprehensiveness of AML Legal Framework	0.8	Very High
2. Effectiveness of Supervision Procedures and Practices	0.6	Medium High
3. Availability and Enforcement of Administrative Sanctions	0.6	Medium High
4. Availability and Enforcement of Criminal Sanctions	0.4	Medium Low
5. Availability and Effectiveness of Entry Controls	0.7	High
6. Integrity of Staff in Securities Firms	0.7	High
7. AML Knowledge of Staff in Securities Firms	0.7	High
8. Effectiveness of Compliance Function (Organization)	0.6	Medium High
9. Effectiveness of Suspicious Activity Monitoring and Reporting	0.6	Medium High
10. Level of Market Pressure to Meet AML Standards (Optional)	0.8	Very High
The 3 variables below assessed by Banking and National Vulnerability		
11. Availability and Access to Beneficial Ownership Information	0.7	High
12. Availability of Reliable Identification Infrastructure	0.6	Medium High
13. Availability of Independent Information Sources	0.6	Medium High

Comprehensiveness of AML legal framework – Very High

12.54 IBs are subject to the same requirements as all other regulated financial services businesses. The AML Handbook includes Codes of Practice that must be followed and includes guidance on how to comply with the MLO and the Codes. The definition of "investments" is currently being expanded to cover a wider range of derivative and crypto investments. As already indicated above, there are in excess of 25 Investment Business Exemptions. These are being considered as part of the exemptions project. Industry is also of the view that the legal framework is comprehensive.

Effectiveness of supervision/oversight activities - Medium High

12.55 The JSFC authorises and supervises IBs. Under the new supervisory framework entities are split into Pooled, Proactive and Enhanced Supervisory approaches. As at 19 July 2019, 96% of IBs were subject to Enhanced or Proactive Supervision.

12.56 On an annual basis, entity supervisors are required to put in place a Supervision Plan which is based on risks for each of the IBs that they supervise. Supervisory progress is monitored periodically by line managers. Since Q4 of 2016 a dedicated Supervision Examination Unit (SEU) has been in place with the primary responsibility of organising and leading on-site thematic, entity risk and event-led supervision examinations. Since 2019 a dedicated Financial Crime Examinations Unit has worked alongside the SEU focussing on AML/CFT examinations.

12.57 Reducing levels of staff turnover at the JFSC has been observed in the past 3 years (approximately 10%). Supervisors have a good expertise to supervise AML/CFT compliance within the IB sector; such experience is supplemented by relevant professional qualifications and in-house JFSC learning support. The majority of supervision staff are members of professional organisations such as the CISI, ICSA, ACCA, ICAEW, CII and ICA.

Availability and enforcement of administrative sanctions – Medium High

12.58 This variable has been assessed as "Medium High" due to the lack of civil penalties applied in practice and the lack of details within the JFSC public statements. The JFSC has a civil penalties regime but as at 31 August 2019 only one civil penalty has been imposed. The regime is being extended to principal persons such as directors but not to senior managers.

12.59 Also, action taken by the JFSC Enforcement team has been hindered, as the ultimate sanction for breach of the MLO is criminal. They are not able to take action under a criminal statute which also requires the criminal standard of proof. The JFSC Enforcement team refers cases to Law Enforcement. The JFSC Enforcement team will investigate cases that appear to be breaches under the MLO using their powers under the Supervisory Bodies Law and will take action on regulatory breaches that align with breaches of the conduct Codes of Practice.

Availability and enforcement of criminal sanctions - Medium Low

12.60 This variable has been assessed as "medium low" due to the lack of criminal sanctions. All breaches of the MLO are considered to be crimes. There have only been 2 successful prosecutions on record relating to a breach of the MLO.

Availability and effectiveness of market entry controls – High

12.61 Due to the number of IBs which are subject to Supervisory authorisation process, Registry checks and other checks performed by foreign regulators this variable is assessed as "High". While the principal and key persons of an IB will be subject to the PQ process, investment business employees giving investment advice also have to meet the professional qualification requirements. Specific requirements are in place that apply for the different classes of investment business e.g. when advising retail customers.

Integrity of Entity Staff – High

12.62 Integrity is vital to an IB as trust and personal relationships form the basis of the service. There are few examples in the investment industry where investment employees demonstrated inappropriate conduct. However, the regulatory Code of Practice requirements (which include specific qualifications) are in place; as well as the legal obligation to screen employees on employment and change of role.

12.63 80 IB's responding to the JFSC 2017 Data Collection Exercise reported that in relation to disciplinary actions less than 0.5% of staff have had disciplinary actions taken against them which is a small proportion: in 2018 this dropped to 0.3%[97].

[97] As per JFSC 2018 data collection exercise.

AML Knowledge of Entity Staff - High

12.64 Investment business employees are required to have specific qualifications[98] and there are also requirements for ongoing CPD in the regulatory Code of Practice and a requirement to "assess and monitor the working practices, competence and probity of its directors, partners, senior managers and other employees". Qualifications undertaken by members of the IB industry are linked to membership of an organisation such as the CISI which have an ongoing CPD requirement.

12.65 The AML/CFT code also requires Investment Businesses employees to be trained in AML/CFT. The Finance Sector Survey responses confirmed that a wide variety of AML/CFT training is available in Jersey (internal, external, web, knowledge testing, etc.).

Effectiveness of compliance functions (entity level) – Medium High

12.66 The effectiveness of the compliance function rated "Medium High"; influenced by the lack of reportable data from the JFSC on firm's compliance controls.

12.67 Compliance function arrangements (including number of FTEs in compliance) are often a function of size; (i) IFAs and smaller Wealth Managers may have individuals who have multiple roles and therefore do not exclusively spend their time acting as MLRO, MLCO and CO as they may also be directors or have a customer facing function; (ii) Larger Wealth Managers may be part of global groups and have global group policies. Entities have to ensure that these global polices meet Jersey standards. AML compliance may also be undertaken by a central dedicated AML/CFT team which has the advantage that this is their specialism and area of expertise but this separation from the day to day business may lead to a lack of understanding of the business; (iii) Where Wealth Managers are part of a larger group or have a regulated parent, the group compliance function or regulated parent will in effect add a layer of monitoring and oversight.

Effectiveness of Suspicious Activity Monitoring and Reporting – Medium High

12.68 Monitoring processes of IBs often include real time, post event monitoring and/or a combination of both (majority of the cases). Monitoring rules are designed either on the basis of customer profile or general monitoring rules, however the vast majority of businesses design monitoring scenarios combining general monitoring rules and customer's profile information.

12.69 However, reporting trends and practices seems to be dependent on size of the entity/business. Detailed guidance on the requirement to report is included in section 8 of the AML/CFT Handbook. Overall, 24% of all the SARs filed (across all sectors) from 2015 to 2017 were related to Tax offences.

Level of market pressure to meet AML standards –Very High

12.70 Jersey is an IFC and the majority of IB customers are non-Jersey residents therefore Jersey has to be seen to be meeting AML standards internationally. IBs that are part of a group will also be subject to group standards and pressures to meet AML standards (such as Banks). Dealing with US dollars and US regulatory

[98] https://www.jerseyfsc.org/pdf/GN_Professional_Qualifications_(IB)_January_2014.pdf

entities also put additional pressure on entities to comply with US requirements. Pressure also comes from custodians and platform providers, who tend to be large corporates, to meet international standards and if these are not met then there is risk that IBs lose an access to market, i.e. services may not be available.

SECTION 13

Legal Sector

Key Findings:

Over half the clients of legal firms in Jersey are rated as low risk with only 5% rated as higher risk. Only 20% of clients and beneficial owners/controllers are from a jurisdiction which is not the UK or a Crown Dependency. The legal sector is the third largest sector of the Jersey economy in terms of both revenue and number of employees (being preceded by the banking and TCSP sectors). Jersey legal firms are involved in large multi-national transactions but often play a small role. A tension between legal professional privilege and submitting a SAR has been identified. This may account for the low number of SARs given the size of the sector.

The assessment of ML vulnerability in Legal sector is medium

Overview of the legal sector

13.1 Those persons who wish to provide certain legal services in or from within Jersey must register with the JFSC as required by the provisions of the SBJL. Registration is at Level 2. The JFSC supervises legal service providers (lawyers or law firms) for ML purposes. The Law Society of Jersey (LSJ) is the governing body of lawyers practicing as Advocates and solicitors of the Royal Court of Jersey. It maintains a publicly available register of all members. The LSJ has the role of both professional body and regulator for conduct.

13.2 There are two kinds of Jersey qualified lawyers: Advocates, who have rights of audience to represent clients in all courts in Jersey, and solicitors, who have limited rights of audience (for example, they may represent clients in the Petty Debts Court).

13.3 Only Jersey qualified lawyers may practise Jersey law. In order for a lawyer to become an Advocate or solicitor they must meet the requirements set out in the Advocates and Solicitors (Jersey) Law 1997[99] and be a member of the LSJ (unless they are employed by the Law Officers' department). All lawyers practising Jersey law are required to be members of the LSJ. An individual cannot be a partner in a Jersey law firm unless they are a member of the LSJ. Lawyers in Jersey who hold an overseas legal qualification may only practise the law of that jurisdiction and will not be members of the LSJ. If they wish to practise Jersey law, they must undertake further study and examinations to meet the requirements of the Advocates and Solicitors (Jersey) Law 1997.

13.4 Law firms wishing to convert from a customary partnership to an LLP must also apply to the LSJ to be recognised as a legal services body, a process which involves the LSJ conducting a series of conduct-based checks.

[99] The requirements include passing examinations, having relevant experience and being considered to be fit and proper by the Royal Court of Jersey.

13.5 Some lawyers also act as notaries. A notary must be a qualified lawyer and pass an examination in notarial practice. Notaries are appointed by the Court of Faculties of the Archbishop of Canterbury and regulated by the Master of the Faculties. There are around 20 - 25 notaries in Jersey.

13.6 The clients of lawyers in Jersey includes individuals, banks and financial institutions, listed companies, funds and investment structures. Clients are resident in many jurisdictions, but data collected by the JFSC shows that at both 31 December 2017 and 2018, 58% of clients who are individuals, or beneficial owners and controllers of clients that are not individuals, are resident in Jersey.

13.7 Law firms offer a range of services including corporate and commercial, private client work, property, dispute resolution, insolvency and restructuring, probate and executorship. Lawyers are integrally involved in the immovable property sector in Jersey, being used by both purchasers and sellers of property, and in all transactions that require a contract to be passed before the Royal Court of Jersey.

13.8 Law firms may be members of international networks made up of separate entities. Some networks will have an overlying coordinating entity. Each entity will operate independently but may abide by common policies and standards. The networks may be 'headquartered' in a specific jurisdiction, including Jersey. Members of the networks may refer business to each other

13.9 Much legal work is introduced to the Island by large overseas firms of lawyers typically in respect of large corporate transactions which involve a Jersey legal person or arrangement, and advice is required on Jersey law. Jersey law firms also play a role in introducing new business to the Island aside from the legal work. The nature of the activities that fall within the scope of the SBJL means that litigation privilege is unlikely to apply, although advice privilege will still be applicable.

Regulated activities

13.10 The SBJL captures lawyers who are providing legal or notarial services to third parties when participating in financial, or immovable property, transactions concerning any of the following (hereafter referred to as Schedule 2 activity): (i) the buying and selling of immovable property or business entities; (ii) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property; (iii) the managing of client money, securities or other assets; (iv) the opening or management of bank, savings or securities accounts; (v) the organization of contributions necessary for the creation, operation or management of companies; or (vi) the creation, operation or management of trusts, companies or similar structures.

13.11 The JFSC data shows that in 2017 and 2018 the most common activity of lawyers was providing legal services to third parties when transaction include the creation, operation or management of trusts, companies or similar structures. Typically, this would include drafting, reviewing and advising on trust deeds, supplemental deeds and loan agreements etc.

13.12 Jersey lawyers are not allowed to provide TCSP services unless they register separately under the FSJL to do so. Since 2000 there has been no regulatory exemption for the registration of persons carrying on trust company business who are lawyers.

13.13 In practice, lawyers wishing to conduct company formation or any other activity defined as trust company business by the FSJL (e.g. acting as a director or trustee) have established separate companies specifically to do this, rather than conducting the activity through the law firm itself. Lawyers may also undertake other regulated activities through separate companies, such as acting as a listing agent or executor.

Unregulated activities

13.14 All other legal services other than those noted above are not supervised for AML/CFT purposes (e.g. family law or dispute resolution).

Threats in the legal sector

13.15 The legal sector has been assessed as medium in relation to the ML threat to the sector.

13.16 The JFSC recorded no cases that were investigated in this sector. There are no recorded ML prosecutions featuring the sector, and no convictions listed, the JFSC also have no recorded cases where sanctions have been taken by them. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium and the size of the sector and/or its share in the economy is deemed to be medium.

13.17 The legal sector is attractive to criminals as its use can add credibility and can assist with integration of illicit funds into legitimate structures. Particularly vulnerable to criminals trying to hide illicit funds are the creation and formation of trusts and companies which may be targeted by high net worth individuals in order to disguise the true beneficial ownership. This sector does have some overlap with the TCSP sector in terms of corporate structuring where legal professionals are involved through the provision of legal advice. Conveyancing is also seen as an area where the threat of ML is present, with the legal sector having contact with clients and their funds.

13.18 In 2018 a lawyer was sentenced to 42 months in jail for fraud plus 8 months for failing to comply with the Money Laundering Order. The offences relating to this conviction took place between 2008 and 2014. The lawyer occupied a most significant position of trust. He took an oath to protect the estates of the vulnerable but manifestly abused that trust. The victims in this case were exclusively interdicts whose client accounts were plundered to the value of nearly GBP 100,000 to shore up his ailing practice and whose funds were used to pay transactions or execute services. Such activity was taking place within a legal practice that had a shocking absence of the most basic anti-money laundering requirements. The lawyer pleaded guilty to 23 counts of fraudulent conversion as well as a breach of the Money Laundering Order between 2008 and 2014.

Vulnerabilities in the legal sector

13.19 The assessment of ML vulnerability for this sector is: medium.

Inherent vulnerabilities

Total size/volume

13.20 The legal sector is the third largest in terms of both revenue and number of employees (being preceded by the banking and TCSP sectors). However, the revenue generated by the legal sector that derives from Schedule 2 activity amounts to 86 % in 2017 and 83% in 2018 of total revenue[100].

13.21 As at 31 December 2018, there were 53 law firms registered with the JFSC. 9 Jersey law firms were not registered with the JFSC as they are not conducting any Schedule 2 activity.

13.22 Data collected by the JFSC showed that the majority of the legal sector is either a sole practitioner (2017: 20%, 2018: 26%) or is a firm with 10 employees or less (2017: 45%, 2018: 37%). Only 4 law firms reported having more than 100 employees.

13.23 According to Statistics Jersey, the legal sector generated revenue of GBP 250m in 2017 and GBP 240m in 2018, out of a total of GBP 2,510m (2018: GBP 2,690m) for the financial services sector[101] as a whole. The data collected by the JFSC shows that in 2017, 60% (2018: 59%) of the income reported by the firms that responded, was generated by the four largest firms (by number of employees).

13.24 Statistics Jersey also reported that 1,630 individuals were employed in the legal sector as at 31 December 2018, out of a total of 13,760 for the finance sector as a whole. The data collected by the JFSC shows that in 2017, the four largest firms employed 54% (2018: 48%) of the total employees reported by respondents.

13.25 In terms of transaction size, law firms in Jersey are involved in providing advice on the use of Jersey legal persons and legal arrangements in some very significant and complex transactions involving assets worth tens of millions of pounds. However, in many cases the local legal input may be very small (although key to the transaction), for example providing a legal opinion on a point of company law for a multi-million pound structure and, in fact, such transactions are arranged and coordinated by law firms in the City of London.

13.26 The size of the sector is considered to be medium.

Client base profile

13.27 The nature of the client base is likely to vary depending on the size of the law firm and the service offered.

13.28 Jurisdictional risk and complexity of transactions are considered important factors for client risk assessment purposes more so that the size of the transaction. The NRA working team considered it probable that the highest risk clients are likely to be provided with services by more than one firm in Jersey. HNWIs in particular are likely to seek out the appropriate expertise for their business, which depending on the type of transaction, may be at different law firms.

13.29 The PEPs were concentrated (77% (2018: 83%)) in the larger firms (over 10 employees), although PEPs were also reported by the sole practitioners with

[100] As defined at paragraph 14.10 above.

[101] Includes banking, trust & company administration, legal, investment advisory, fund administration, accountancy, fund management and other.

none of them being connected to a higher risk.

13.30 In 2017 no law firms reported any clients connected to an enhanced risk state, and in 2018 one law firm reported a connection, which has been notified to the JFSC's Supervision team.

13.31 Analysis of the data collected by the JFSC shows that more than half of clients who are individuals and beneficial owners/controllers of clients that are not individuals are resident in Jersey. A further 22 % (2018: 20%) are resident in the UK, Guernsey and the Isle of Man. Less than 2% in both 2017 and 2018 are resident in higher risk countries. Of the clients that are resident outside of Jersey and the UK/Guernsey/Isle of Man, 75% (2018: 85%) are clients of the larger firms (10 employees or more).

13.32 Much of the non-resident transactional activity is referred to lawyers by large London law firms. These clients will tend to be nationally recognised, well-established and financially sound companies from both the UK and overseas.

13.33 In 2017 89% (2018: 91%) of clients who are individuals have been met and in 68% (2018: 86%) of cases, at least one beneficial owner/controller of clients who are not individuals was physically present for identification purposes.

13.34 The inherent vulnerability of the client base is considered high due to the nature of the typical client base.

Use of agents

13.35 The use of agents does not exist in the legal sector. There is no inherent vulnerability arising.

Level of cash activity

13.36 The data collected by the JFSC showed an average value of cash transactions of less than GBP 200 (2018: GBP 160). These cash transactions are likely to relate to fees being paid in cash by legal aid clients, cash included in estates, and spending money provided to those under curatorship[102]. They are considered to be insignificant in the context of the overall transactions conducted by the sector.

13.37 The inherent vulnerability relating to the level of cash activity in the legal sector is assessed as low.

International transactions

13.38 As noted above, much legal work is introduced to the Island by large overseas firms of lawyers, typically in respect of large transactions involving lawyers from different jurisdictions, being led by one large firm (e g based in London).

13.39 These International transactions can be very significant, and complex, involving large amounts. However, in many cases the local legal input may be very small, for example providing a legal opinion on a point of Jersey company law for a structure and, in fact, such transactions are arranged and coordinated by law firms in the City of London or other major financial centres. Such transactions are concentrated in the largest law firms in Jersey and the clients will tend to be nationally recognised, well-established and financially sound companies from

[102] A curator was a person appointed by the Royal Court of Jersey under the Mental Health (Jersey) Law 1969 to conduct the affairs of someone found by the court to be incapable of managing their own property and affairs by reason of mental disorder or addiction. In October 2018 that law was repealed and replaced by the Capacity and Self-Determination (Jersey) Law 2016. Individuals undertaking this role are now known as delegates.

both the UK and overseas. These transactions tend to be promoted heavily in the media by the firms involved, but the reports do not disclose the extent of the Jersey firm's involvement, and thus may present a misleading impression of the nature of the work that is being done in the Island, e.g. a legal opinion on a point of Jersey company law for a structure.

13.40 Potential vulnerabilities exist because even though the Jersey law firms will need to gain an understanding of the wider transaction in order to provide their advice, in practice it is possible that the leading law firm will not provide them with complete details of the whole transaction, including CDD. Vulnerabilities in respect of these transactions can arise by lawyers being exposed to the risk of being involved in schemes that are fraudulent or designed to evade tax (see typologies section below).

13.41 The inherent vulnerability relating to law firms being involved in international transactions is assessed as high.

Other vulnerable factors of the profession

Client accounts

13.42 Majority of law firms operate a client account.

13.43 Any Jersey lawyer operating a client account must comply with the LSJ Accounts Rules 2017 that include a requirement for a lawyer to deliver to the LSJ, on an annual basis, an accountant's certificate. The certificate must be prepared by a qualified accountant, who carries out checks on the lawyer's client account, however such checks do not include CDD related checks.

13.44 A vulnerability exists that lawyers may be mixing funds relating to Schedule 2 activities with funds relating to non-Schedule 2 activities in their client accounts. Non-Schedule 2 activities are not subject to the AML regulatory regime and thus there may be funds in the client account where the underlying clients have not had their identity verified by the lawyer.

13.45 The inherent vulnerability relating to the use of client accounts is considered to be medium.

Legal professional privilege[103] (LPP)

13.46 There is a tension between a lawyer's duty of confidentiality to their client and the disclosure requirements imposed under the POCJL and the TL. This may represent a vulnerability where reports are not externalised to the JFCU due to LPP.

13.47 Advice privilege applies to communications between a lawyer and their client if the communications are both confidential and for the purpose of seeking advice from a lawyer or providing it to a client. Advice is widely interpreted and could relate to any kind of legal work undertaken, whether under Schedule 2 or otherwise.

13.48 MLROs of law firms face uncertainty when evaluating internal SARs and considering whether to externalise them to the JFCU, namely whether making the SAR will breach client confidentiality and the client's right to LPP. The LSJ has

[103] Privilege can be considered under two headings: litigation privilege and advice privilege. Litigation privilege is unlikely to apply to Schedule 2 work and is not considered further in this report.

not published any specific guidance to its members on the subject of LPP, but there is guidance available from the Law Society[104]. The AML Handbook for the Legal Sector also includes some guidance on this matter, there is a risk that the guidance may become outdated as cases concerning LPP are decided by the Courts.

13.49 A number of vulnerabilities arise in the context of LPP:

- LPP prevents lawyers from making disclosures to law enforcement where they suspect criminality. However, it should be noted that LPP applies only to information received directly from a client, and not to information obtained from another source, e.g. an internet search.
- The interpretation of LPP is complex, and MLROs may need to take legal advice on whether LPP applies.
- Incorrect (whether deliberate or not) application of LPP may frustrate investigations by law enforcement.
- Advice privilege is extremely wide and applies to all legal advice and not just that relating to litigation.

13.50 The inherent vulnerability relating to LPP is assessed as medium.

Being paid with the proceeds of crime

13.51 A further vulnerability that is unique to the legal profession is that lawyers provide advice to clients in litigation scenarios, i.e. their clients are being prosecuted and they could be paid for their services with the proceeds of crime. This is unlikely to be a major vulnerability for Schedule 2 activities.

13.52 The inherent vulnerability in relation to being paid with the proceeds of crime is assessed as medium.

Anonymous use of legal services

13.53 The anonymous use of the services of a lawyer is not available under the AML framework as the identity of the client must always be found out, unless a concession applies. The NRA working team advised that even where CDD exemption is applied, the name of the client will be known. The identity of clients using a law firm's client account will always be known.

Difficulty in tracing transaction records

13.54 Feedback from the NRA working team suggests that adequate records will be maintained by law firms and that transactions are easy to trace. However, legal professional privilege may apply to Schedule 2 activities which means that records may not be obtainable.

Existence of ML typologies

13.55 Typologies relating to the legal sector are considered to exist. The typologies that are available relate mainly to other jurisdictions, and also involve the provision of TCSP services by lawyers (which, are provided by a minority of lawyers in Jersey and only through separate vehicles, not the law firms).

[104] England & Wales

Use in fraud or tax evasion schemes

13.56 The possibility of using lawyers in fraud or tax evasion schemes is considered to exist. In general, lawyers do not give tax advice, unless it is generic. However, where a lawyer is giving legal or tax advice in relation to a large international transaction, there is a vulnerability to being involved in giving advice on a scheme that is designed for fraudulent purposes or for tax evasion. This vulnerability is somewhat mitigated by the CDD that is undertaken prior to giving advice. However, there is a tension between providing advice on a timely basis where time pressure is exerted by the leading law firm that is driving the transaction and collecting adequate CDD.

Non face to face use of the services

13.57 Non face to face initiation of business relationships is considered to be available. The data collected from lawyers by the JFSC showed that in 2017, the proportion of clients met face to face was high (only 11% (2018: 9%) of clients who were individuals were not met, and the number of instances where at least one beneficial owner or controller of a client that is not an individual were not met was around a third (32% (2018: 14%).

Control vulnerabilities

Table 13.1

Control Vulnerabilities Variables	Assessment Rating of the Legal Sector	Legal Score
1. Comprehensiveness of AML Legal Framework	High	0.8
2. Effectiveness of Supervision Procedures and Practices	Medium Low	0.4
3.Availability and Enforcement of Administrative Sanctions	Low	0.
4. Availability and Enforcement of Criminal Sanctions	Low	0.
5. Availability and Effectiveness of Entry Controls	Medium	0.5
6. Integrity of Staff in TCSP Firms	Medium Low	0.4
7. AML Knowledge of TCSP Firms' Staff	Medium High	0.6
8. Effectiveness of Compliance Systems	Medium	0.5
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium High	0.6

Comprehensiveness of AML legal framework

13.58 The AML legal framework that applies to lawyers is fundamentally the same as that applied to all other relevant persons – one legislative regime with very few variances by industry sector.

13.59 The MLO includes a concession which allows lawyers and estate agents to apply CDD exemption to a client with residential status in Jersey who is entering into a registered contract[105] (i.e. a contract passed before the Royal Court for the purchase or sale of immovable property). It could be considered as vulnerability, as whilst the professionals involved in the transaction (lawyers and estate agents) must identify their client, the exemption allows them to proceed without verifying the identity of their client (on the basis that the Population Office has already done so). However, in practice, this exemption is used by a minority of lawyers and estate agents. Statistics Jersey reported 1,391 transactions through the Royal Court in respect of residential and commercial property and land in

[105] This is because the Royal Court already requires a purchaser to be able to demonstrate their residential status (since 2012 by way of their registration card). Registration cards are issued by the Population Office, and in order to receive one, a person must, inter alia, prove their identity by presenting a valid passport or national identity card. The Population Office does not carry out any other verification of identity.

2017 and 1,447 in 2018[106].

13.60 Where work is introduced to a Jersey lawyer by an overseas firm, the lawyer may place informal reliance on the CDD conducted by the foreign law firm; however, if CDD is not up to the standard required by the Jersey AML regime, then additional CDD will be collected by the Jersey lawyer. The Jersey lawyer is not permitted, under the Jersey regulatory regime, to treat the introducing law firm as the client (unless the advice to be given is generic) and must carry out identification measures on the ultimate client.

13.61 No guidance on placing reliance on third parties for CDD purposes is available, therefore it represents a potential vulnerability.

13.62 The comprehensiveness of the AML/CFT framework is assessed as high.

Effectiveness of supervision/oversight activities

13.63 The JFSC is clearly identified in the SBJL as the AML/CFT supervisory body for lawyers.

13.64 Following a restructure in the Supervision Division of the JFSC in 2018, the majority of lawyers have been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

13.65 "The JFSC continues to develop it's risk-based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected.

13.66 Whilst the majority of lawyers are allocated to the Pooled Supervision Unit, there are a number that are supervised within one of the Relationship Managed teams. This is usually where they also hold a TCB licence. The approach within the Relationship Managed Teams is proactive or advanced with a dedicated supervisor allocated to the entity.

13.67 However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

13.68 A low level of on-site examinations was noted pre 2018 however, some comfort can be taken from the fact that the JLS also performs a supervisory role. It does not however actively supervise its members e.g. by way of on-site examinations, and its remit does not specifically include AML/CFT matters.

13.69 The effectiveness of supervision/oversight activities is assessed as medium low.

Availability and enforcement of administrative and criminal sanctions

[106] The data collected by the JFSC in respect of 2017 and 2018 showed that only 2 of the larger law firms used the exemption, in respect of 244 and 446 clients respectively. The data also shows that in 2017 the exemption was used by 4 estate agents in respect of 297 clients. The degree of overlap between these two sets of data is not known, i e whether both the estate agent and the lawyer are using the exemption in respect of the same client.

13.70 The JFSC has a range of administrative sanctions available to it via the SBJL. A vulnerability exists as the JFSC does not have as extensive a range of administrative penalties for DNFBPs as it does for financial institutions. Moreover, the JFSC is unable to apply civil financial penalties to lawyers, as the regime does not extend to those sectors.

13.71 To date there has been one administrative sanction applied to a lawyer by the JFSC for AML purposes[107].

13.72 Criminal sanctions for failing to apply money laundering preventative measures are available via the MLO[108], POCJL and TL. In 2018 the Jersey lawyer sanctioned by the JFSC was imprisoned after admitting a number of criminal charges relating to fraudulent conversion and a breach of the MLO. There have been no other criminal prosecutions of lawyers for money laundering offences.

13.73 The LSJ has disciplinary powers and can reprimand members privately or publicly and can impose a fine of up to GBP 10,000. It cannot suspend or strike off a member. Any matters considered too serious for the LSJ to deal with are referred to the AG, who can refer a matter to the Royal Court. The Court has the power to issue an unlimited fine, can suspend a lawyer for 12 months, or strike off a lawyer[109].

13.74 The availability and enforcement of administrative and criminal sanctions is assessed as low.

Availability and effectiveness of entry controls

13.75 A vulnerability exists as the regulatory entry controls for lawyers (firms and sole practitioners) are limited. There is no criminality test on Level 2 applicants, nor any other kind of fit and proper assessment. The JFSC has a limited ability to refuse an application for registration or revoke a registration.

13.76 Entry controls are imposed by the JFSC at the time of registration of the firm or sole practitioner under the SBJL. Registration is at Level 2 and the applicant is required to provide the JFSC with specific information which includes the applicant's name, description of business to be carried on, principal address, details of Principal and Key Persons, Business Risk Assessment and confirmation that AML/CFT policies and procedures are in place. The SBJL provides that a person who knowingly or recklessly provides the JFSC with information that is false or misleading in a material particular shall be guilty of an offence in certain circumstances, including in connection with an application for registration. A person guilty of such an offence is liable to imprisonment for a term of 5 years and a fine.

13.77 Subsequent changes to any information supplied at the time of application are required by the SBJL to be notified to the JFSC as soon as possible. Failure to supply such information without reasonable excuse is an offence and carries a penalty of imprisonment for a term of two years and a fine. In practice, it is likely that only those pieces of information that are required to be notified under the MLO (i.e. changes to Key Persons) will be provided to the JFSC.

13.78 However, an individual cannot practise Jersey law without holding a relevant legal qualification. For Jersey law firms, this is considered to slightly reduce the vulnerability by setting a sector specific entry control at individual level and firm level, since only members of the LSJ can become a partner of a Jersey law firm.

[107] The JFSC issued a public statement against Mr K Manning on 20 November 2019: https://www.jerseyfsc.org/news-and-events/mr-kevin-robert-manning-r/

[108] See https://www.jerseylawsociety.je/news-room/news/jersey-solicitor-jailed-client-account-fraud/

[109] Mr Manning was struck off by the Royal Court on 31 July 2019.

However, membership of the LSJ does not of itself comprise an entry control, as the only entry requirement is to be a Jersey qualified Advocate or solicitor, the LSJ therefore relies on the individual having completed the qualification process described above.

13.79 There are lawyers in Jersey who do not practise Jersey law but are, for example, English solicitors. A similar entry test applies as a prospective English solicitor must satisfy the Solicitors Regulatory Authority as to their character and suitability[110].

13.80 There is a potential vulnerability in relation to individuals who claim to be experts in law (e.g. employment law, accident claims), but they are not qualified lawyers. They give advice on specific areas of Jersey law but are not regulated for conduct by the LSJ nor for AML/CFT by the JFSC.

13.81 The availability and effectiveness of entry controls is assessed as medium.

Integrity and AML knowledge of entity staff

13.82 A lawyer cannot practise law unless they have a professional qualification; this, together with the disciplinary powers that the LSJ can impose, and the ability of the JFSC and the courts to impose sanctions, should act as a deterrent to poor conduct by lawyers.

13.83 Feedback from the NRA working team suggests that lawyers act professionally and with integrity. However, this cannot be corroborated by the JFSC which has not supervised lawyers in recent years.

13.84 The AML Handbook for the Legal Sector requires, by way of a Code of Practice, that employers must screen the competence and probity of their employees (including the partners and senior managers) at the time of recruitment and when there is a change of role. Data collected by the JFSC from lawyers in respect of the years 2016 to 2018 showed that 13 disciplinary actions (for serious misconduct[111]) were taken against members of staff by 9 firms in the three-year period.

13.85 The data provided from the LSJ shows that only a small number of cases have been referred to the LSJ's Disciplinary Committee in the last four years. This may support the assertion that lawyers act with integrity, however it should also be noted that the LSJ dismissed the majority of complaints it received because they were out of scope. The LSJ has advised that most of the complaints that it receives are in respect of small and medium sized firms. There may be a correlation between the number of complaints and the smaller compliance functions in these firms.

13.86 Taking into account the above considerations, together with the vulnerabilities associated with sole practitioners and very small firms, and the lack of corroborative evidence from the JFSC, the NRA working team has assessed the integrity of staff as medium low.

13.87 Lawyers are required to provide employees with adequate AML training at appropriate frequencies. There are consulting firms in Jersey that will deliver AML training that is tailored to a client's requirements, but smaller firms and sole practitioners are perhaps less likely to be able to resource in-house training or to find affordable external AML training and, in the absence of JFSC outreach, this

[110] See https://www.sra.org.uk/solicitors/handbook/suitabilitytest/content.page

[111] Serious misconduct includes failing to report knowledge, suspicion or reasonable grounds for knowledge or suspicion of money laundering or terrorist financing without reasonable excuse, or as soon as it is practicable. It also includes factors such as conviction for a serious criminal offence, or failing to complete prescribed ML/TF training.

presents a vulnerability.

13.88 All relevant persons will have had to demonstrate knowledge of AML risks at the commencement of business. The AML Handbook for the Legal Sector does include a section on corporate governance which includes Codes of Practice to complement the businesses' legal obligations under the MLO to establish and maintain appropriate and consistent policies and procedures to prevent and detect money laundering.

13.89 It is reasonable to assume that the AML knowledge of many lawyers will be good, as they give advice on AML issues, as well as provide training, to their clients.

13.90 The AML knowledge of entity staff is assessed as: medium high.

Effectiveness of compliance functions (entity)

13.91 The following matters have been considered in making an assessment of this vulnerability: (i) Lawyers are required by the MLO to appoint an MLCO and MLRO; (ii) compliance function arrangements depend on size: very small firms will be unlikely to employ dedicated compliance staff (e.g. MLRO and MLCO will be carried out by a member of staff who also has other responsibilities within the business) as opposed to large and medium size firms that have dedicated compliance function. Given that more than half of all law firms have 10 or fewer employees, this represents a vulnerability.

13.92 The recent survey of consulting and law firms operating in Jersey support this conclusion; (iii) Client databases in law firms are manual, which may hinder their ability to effectively retain and refer to CDD and to monitor transactions.

13.93 The view expressed by the NRA working team that there is a shortage of good quality senior compliance staff on the Island. Such a shortage will have an impact on the effectiveness of firms' compliance functions and should be considered a vulnerability.

13.94 The effectiveness of compliance functions as medium.

Effectiveness of Suspicious Activity Monitoring and Reporting

13.95 For transaction monitoring purposes, lawyers rely on manual checks rather than automated systems (due to the nature of business relationships with their clients). The view of the JFCU is that the quality of SARs submitted by law firms is good, which corresponds with the perception that the AML knowledge of the legal sector is medium high.

13.96 Most SARs are raised at client take-on as CDD is collected but can also occur as a transaction develops. JFSC data shows that more 70-80 % of the lawyers screen clients at take on to identify PEPs and persons subject to sanctions and carry out adverse media screening.

13.97 The effectiveness of suspicious activity monitoring and reporting is assessed as medium high.

SECTION 14

Money Service Business (MSB) Sector (non-bank)

Key Findings:

The most material activities within the MSB sector are bureau de change activity and pre-paid cards.

The assessment of ML vulnerability for MSB sector is Medium low

Overview of the MSB sector

14.1 This section of the report does not consider money service business carried on by a deposit-taker therefore the population of registered MSBs is small (8 registered persons) and comprises two different aspects of MSB activity:

- Those that offer bureau de change and cheque cashing services, and/or act as agents for the one large international money transmission provider that is registered in Jersey (retail MSB). This category includes one large international money transmission provider. Only one retail MSB offers a cheque cashing service, which is available to customers in certain restricted circumstances only cashing cheques issued by the Government of Jersey in respect of benefits. Together three of the retail MSBs have a total of 22 Jersey-based outlets where the public can access MSB services (one of these is a government owned trading body). In total, four registered persons conduct this activity.
- Those that provide global money transmission and foreign exchange services for businesses (including regulated businesses) and high net worth individuals (wholesale MSB). Of the four registered wholesale MSBs, only one is actively engaged in money transmission and foreign exchange.

14.2 The volume and value of transactions through MSB providers in Jersey is insignificant when compared to other financial services sectors in the Island. Money transmission is not offered by 'corner shops'[112] and Jersey residents have a choice to also use an MSB service provider established elsewhere (for example PayPal, TransferWise or Revolut). It is also possible for Jersey residents to withdraw foreign currency (euros and US dollars only) from an ATM located at one of the retail MSBs.

14.3 The vast majority of customers of the retail MSBs are Jersey resident individuals which includes seasonal workers that regularly transmit funds to their families in

[112] According to the Metropolitan police, the UK has 45,000 MSBs (https://www.thetimes.co.uk/article/gangs-use-money-transfer-firms-to-export-dirty-cash-says-cressida-dick-p9pl3bzxj)

their country of origin (none of which present higher risk or are conflict zones). Only the wholesale MSBs have customers that are legal persons/arrangements. The nature of the activity means that retail MSBs do not establish business relationships with their customers but will carry out one-off transactions. In contrast the wholesale MSBs will usually have an ongoing business relationship with their customers.

Regulated activities

14.4 The FSJL states that a person carries on MSB if they carry on the business of any of the following: a bureau de change[113]; providing cheque cashing services; transmitting or receiving funds by wire or other electronic means; and engaging in money transmission services.

14.5 Two limited registration exemptions are available via the Financial Services (Money Services Business (Exemptions)) (Jersey) Order 2007: (i) where turnover of a financial period (as defined) is less than GBP 300,000; (ii) persons already regulated under the BBJL. For both exemptions: (i) the persons must notify the JFSC that they are carrying on MSB; (ii) certain provisions of the FSJL continue to apply; and (iii) the whole of the AML regime applies.

14.6 The JFSC data shows that the average transaction value is very low for those relying on the turnover exemption and thus whilst a vulnerability may exist, the risk is low. Data collected from the exempted persons showed a combined turnover of GBP 302,000 and an average of approximately GBP 180 per transaction.

Prepaid cards

14.7 Prepaid debit cards can be purchased from two of the retail MSBs and during the analysis period from one of the wholesale MSBs. There is a distinction between the agent (in this case, the MSB) and the issuer (the person that issues the cards and against which a customer has a claim for redemption or withdrawal of funds). The issuer is carrying on the activity of issuing and administering means of payment (such as credit and debit cards) and is required to register with the JFSC under the provisions of the SBJL and will be supervised for AML/CFT.

14.8 There are 3 issuers registered with the JFSC: two of the registered persons are issuers of prepaid debit cards (may be used to purchase goods and services and also to withdraw cash from ATMs); the third registered person's activity is limited to issuing compensation cards to airline passengers.

14.9 The MSBs are acting as agents of the card issuer and are required by the MLO (in that capacity) to carry out appropriate identification measures when cards are purchased and loaded. Up to the end of 2018, approximately 2,200 prepaid cards were in issue. A further 2,100 cards, which were issued by a retail MSB that revoked its registration in 2018, remain in issue but can no longer be loaded with funds. The cards are used for holiday spending and for parents to provide their children with access to funds (e.g. the children are at university or travelling and the parents can top up the children's cards from Jersey).

14.10 Prepaid cards issued by the retail MSBs are available to Jersey residents only and can be loaded up to a maximum of EUR 10,000 or equivalent; a new customer will not be issued with a card until they have presented themselves at a counter with their proof of identity.

[113] Bureau de change encompasses all foreign exchange transactions.

14.11 The vast majority of the prepaid cards issued by the wholesale MSB have been to Jersey residents, however a small number (less than 80) have been issued to residents of Guernsey, the UK, the Isle of Man and other European countries. The characteristics of the cards are similar to those issued by the retail MSBs, ie they bear the customer's name and have maximum loads of GBP 10,000, EUR 12,000 or USD 15,000. In almost all cases the card holder has been met, except for where the card has been issued to a customer of a TCSP, in which case the TCSP has been relied on as an obliged person. The cards are funded by customers remitting funds electronically to the wholesale MSB.

14.12 The NRA team also noted that the use of prepaid cards issued in Jersey is declining over time as Jersey residents are switching to more sophisticated cross-jurisdictional products that can be obtained online, such as Revolut, which are regulated for AML/CFT purposes elsewhere. This trend has also been observed by law enforcement.

Threats in the MSB sector

14.13 There are no recorded ML prosecutions featuring the sector, and 4 convictions listed; the JFSC have no recorded cases where sanctions have been taken by them. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium/low and the size of the sector and/or its share in the economy is deemed to be low.

14.14 The Bureau de change facility has been used in criminal cases. These cases involving bureaux de change show that criminals may use this sector in order to convert criminal funds into foreign currency in order to transport across borders and to pay suppliers if relating to drugs trafficking.

14.15 The assessment of ML threat for this sector is: medium.

Vulnerabilities in the MSB sector

14.16 The assessment of ML vulnerability for both Retail MSBs and wholesale MSBs is medium low.

Inherent vulnerabilities

Total size/volume – general

Statistics

14.17 Data collected by the JFSC shows that the size of firms conducting MSB varies considerably. The largest firms are those that conduct retail MSB as a small part of a wider, non-financial services activity. The wholesale MSB firms tend to be the smallest in terms of employee numbers.

14.18 MSBs reported 151,500 customers during the year ended 31 December 2017, and 174,127 during 2018. This figure needs to be treated with caution, and is likely to be substantially less, as while the wholesale MSBs will be able to accurately report the number of their customers, this is more difficult for the retail MSBs, who may only be able to report transaction numbers rather than unique customers. Furthermore, customers may use the services of more than one retail MSB, and thus be counted twice or more in the aggregated figures. By way

of comparison, the estimated population of Jersey as at the end of 2017 was 105,500[114].

14.19 JFSC data shows that in 2018 money transmission volumes by wholesale MSBs were approximately GBP 550m (incoming) and GBP 500m (outgoing); foreign exchange transactions in 2018 amounted to just over GBP 550m. In comparison, the data collected from the banking sector showed that in 2018 over GBP 1tn[115] of wire transfers took place for both incoming and outgoing transactions.

14.20 The total size of both the Retail MSB and Wholesale MSB sector is considered to be low.

Client base profile – retail MSB

14.21 The data collected by the JFSC shows that the customers of retail MSBs are exclusively individuals, of which more than 99% are Jersey resident. Only 2% (2018: less than 1%) of customers were considered to be higher risk, with a negligible amount (2018: 2%) considered to be standard risk, and the balance (98%) lower risk. The retail MSBs had no customers that were foreign PEPs or that had connections to enhanced risk states.

14.22 The customers are using the services of the retail MSBs for the purchase of holiday money and for repatriating funds to their countries of origin, and the nature of the business (ie over the counter) means that all customers are met face to face.

14.23 The inherent vulnerability of the retail MSB client base is considered very low risk.

Client base profile – wholesale MSB

14.24 The client base of the wholesale MSBs comprises high net worth individuals and businesses, as well as a number of individuals who have been issued with prepaid cards. Businesses include both trading operations and regulated businesses such as TCSPs.

14.25 The wholesale MSBs have reported that around 8% (2018: 8%) of their customers are considered to be higher risk, 20% (2018: 27%) are standard risk and 72% (2018: 65%) lower risk. 60% (2018: 44%) of customers or beneficial owners of customers are resident in Jersey, and overall 92% (2018: 80%) are resident in Jersey, Guernsey, the Isle of Man and the UK. The client base is reported as including foreign PEPs (2% in 2017 and 2018) and no customers connected to enhanced risk states.

14.26 The inherent vulnerability of the wholesale MSB client base is considered low risk.

Use of agents – retail MSB

14.27 The large international money transmission provider operates in Jersey through an agent, which itself has a sub-agent (these being the two largest retail MSBs). The money transmission provider conducts audits of, and delivers an AML/CFT training programme to, its agents.

[114] As reported by Statistics Jersey.
[115] GBP 1tn is GBP 1,000,000,000,000

14.28 Two retail MSBs also act as agents for distributing prepaid debit cards.

14.29 The inherent vulnerability relating to the use of agents in the retail MSB sector is assessed as low.

Use of agents – wholesale MSB

14.30 The use of agents does not exist in the wholesale MSB sector.

Level of cash activity – retail MSB

14.31 According to the data collected by the JFSC, bureau de change transactions during 2017 and 2018 were funded predominately with cash (2017: 68% and 2018: 54%).

14.32 All payments made through the large international money transmission provider were funded by cash (2017: GBP 3.5m, 2018: GBP 3.75m), and likewise, all incoming money transmissions were paid out in cash (2017: GBP 240,000, 2018: GBP 408,000).

14.33 The inherent vulnerability relating to the level of cash activity in the retail MSB sector is assessed as high.

Level of cash activity – wholesale MSB

14.34 The data collected by the JFSC shows that the use of cash in the wholesale MSB sector does not exist.

Frequency of international transactions – retail MSB

14.35 Data collected from the NRA team shows that MSBs transferred money to 125 countries in 2017 (129 countries in 2018). The top 5 countries to which funds were transmitted in both years (by number of transactions, largest first) are: Romania, Portugal, Poland, Kenya and the Philippines. This reflects the demographics of the seasonal working population in the Island.

14.36 In 2017 money was received from 71 countries (2018: 84), the top 5 being Romania, Portugal, the UK, Ireland and France (2018: Romania, Portugal, Poland, UK and Italy). The value of money received was considerably smaller than that sent in both years.

14.37 With respect to bureau de change transactions, all customers are resident in Jersey and thus there are no international transactions.

14.38 Retail MSBs also act as agents for distributing prepaid debit cards: 74% of cards were issued in Euros, 10% in US Dollars and 16% in Sterling. Transactions made with prepaid cards in 2017 - 2018 amounted to around GBP 4m (both funds withdrawn from ATMs and direct spend on goods and services), almost all of which took place outside Jersey.

14.39 As the value of domestic transactions (bureau de change and cheque cashing) is substantially higher than that of international transactions (money transmission

and prepaid cards), the inherent vulnerability relating to the frequency of international transactions by retail MSBs is assessed as medium.

Frequency of international transactions – wholesale MSB

14.40 The data that was collected regarding money transmission for 2018 shows that, due to the nature of their client base (trading companies and regulated businesses), the majority of transactions processed by wholesale MSBs are international transactions.

14.41 In respect of prepaid cards, the same comments apply as for the retail MSBs. Data obtained from the wholesale MSB that has issued prepaid cards shows that around 75% of the funds loaded onto the cards in 2017 and 2018 was in Euros, with US Dollars comprising around 20% and the balance in Sterling.

14.42 Accordingly, this vulnerability is assessed as high.

Other vulnerable factors of the profession

Anonymous use of MSB services – retail MSB

14.43 The anonymous use of MSB services is rated as not available. Notwithstanding that MSBs are only required by the MLO to carry out identification measures in respect of one-off transactions that are EUR 1,000 or more, therefore in theory anonymous use is possible but in practice the retail MSBs ask customers for proof of identity for transactions over GBP 750.

14.44 The nature of the services provided means that retail MSBs are unlikely to maintain business relationships with their customers, making it more difficult to detect suspicious or unusual transactions. This means that a practical difficulty arises in identifying linked transactions amounting to EUR 1,000 or more. However, Jersey has a small population and the NRA working team confirmed that in their experience counter staff are likely to become familiar with regular customers. MSBs have also implemented procedures such as monitoring transactions after the event by compliance staff, in order to identify linked, suspicious or unusual transactions. See also the section on the Effectiveness of Suspicious Activity Monitoring and Reporting.

Anonymous use of MSB services – wholesale MSB

14.45 The anonymous use of MSB services is available, although it is understood to be limited in practice to use of the concession available under Article 17 of the MLO. The data collected by the JFSC shows that there was limited use of the concessions available under the MLO by the wholesale MSBs during 2017 and 2018.

14.46 Two wholesale MSBs in each year used the concession available in Article 16 of the MLO, relying on 2 persons obliged. The obliged persons were conducting Trust Company Business and Fund Services Business.

14.47 One wholesale MSB reported using the concession available under Article 17 of the MLO[116]

14.48 The concession available under Article 18 of the MLO was used by onewholesale MSB in both 2017 and 2018.

[116] Article 17 provides that simplified identification measures may be applied where the customer is a person in respect of whose financial services business the JFSC discharges supervisory functions, or a person carrying on equivalent business

Difficulty in tracing transaction records

14.49 Records relating to transactions are considered to be easy to trace. All transactions by retail and wholesale MSBs will be recorded and can be readily accessed.

Existence of ML typologies

14.50 ML typologies relating to the MSB sector are considered to exist. Some relevant typologies are included in the document published by the Government of Jersey "Money Laundering Typologies and Trends"[117].

14.51 From a retail MSB perspective, the following are examples of possible scenarios in which retail MSBs in Jersey could be abused by criminals:

- Local drugs trade: Street prices for many commonly traded illicit drugs in Jersey are amongst the highest in the world. Gaining access to markets in the UK and mainland Europe for the purchase of even relatively small amounts of illicit drugs can afford local drug users and lower level dealers opportunities to obtain illegal drugs at lower prices. To facilitate this, some may use known associates, typically in the UK but potentially in other countries, to purchase drugs on their behalf and send them to the island. Another relatively common typology peculiar to the island involves travelling to the UK or more commonly France, in order to obtain pharmaceutical products for self-medicating and illicit purposes.
- The use of cash transmission services, such as MoneyGram, provide a convenient and swift means of transferring funds for these activities.
- Organised crime groups removing funds from the island: Larger scale criminal enterprises also use MSB products locally to remove the proceeds of criminal conduct from the island. Local examples relate to proceeds of drug trafficking and the suspected proceeds of prostitution being sent from the island using cash transmission services. Cash transmissions may also be made between individuals within a given criminal group for drug purchase and payment of travel and subsistence in respect of specific illegal ventures. Historically, pre-paid cards have also been used to facilitate the removal of criminal proceeds from the island, however the types of pre-paid card now available are harder to abuse (cards now bear the customer's name). Tighter legislation in respect of disclosing cash importation and exportations (when required to do so by a customs officer) add to the attractiveness of pre-paid cards and cash transmission services to send funds out of the island.
- Fraud: Money transmission is a commonly preferred means of payment promoted and requested by many fraudsters. Local victims of frauds are commonly encouraged to use money transmission as a means of payment, principally because even though the transaction is traceable, the money is almost never recoverable. Local examples include victims of on-line dating scams, both male and female, sending significant sums to known high-risk jurisdictions. Identifying victims often begins with the MLRO identifying suspicious payments or patterns of payments which are then subject of disclosure to the JFCU. Perpetrators of other frauds, including overpayment scams, have also utilised money transmission as a preferred means of payment.
- Grey economy: There may be many reasons, legitimate or otherwise,

[17] https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/R%20Money%20laundering%20typologies%20and%20trends%20Jersey%20150115%20LB.pdf.

for sending funds from the island. Personal taxation in the island is now managed through the ITIS system, however some business will always be carried out in cash and so inevitably not all earned income will be within reach of the current tax system. Individuals wishing to move cash from the grey economy out of the island may utilise money services business products (for example, a person paid in cash may remit that money to their family overseas without declaring it to the tax authorities). Cash transmission conveniently converts any transaction originating in the island, into the local currency of the recipient location. Secondly, for individuals looking to physically export cash, albeit that there are laws governing such activity, they will need to convert cash into their chosen currency before they travel. Prepaid cards can offer a convenient means to circumvent cash export legislation. With the volume of transactions that retail MSBs carry out, there is little doubt that a small number are likely to involve undeclared income.

Use in fraud or tax evasion schemes

14.52 The possibility of using MSBs in fraud or tax evasion schemes is considered to exist (see above example).

Non face to face use of the products or services

14.53 Non face to face use of the products or services is considered to be very limited for retail MSBs as all customers are individuals and transactions conducted over the counter. Whilst it is possible for foreign currency to be ordered online from a retail MSB for delivery by post, CDD would be requested for any transaction that exceed the set threshold. Moreover, facility to have foreign currency delivered by post is not used much in Jersey due to the small size of the Island.

14.54 Non face to face use of the products is considered to be available but limited[118] for the wholesale MSB sector, due to the customer base including legal persons/arrangements. In particular, where the customer is also a customer of a TCSP, the wholesale MSBs will generally not meet the ultimate beneficial owners/controllers but will either rely on the TCSP as an obliged person or request copy CDD documentation from them.

Control vulnerabilities

Table 14.1

Control Vulnerabilities Variables	Assessment Rating of the MSB Sector	MSB Score
1. Comprehensiveness of AML Legal Framework	Very High	0.8
2. Effectiveness of Supervision Procedures and Practices	Medium	0.5
3.Availability and Enforcement of Administrative Sanctions	Very High	0.8
4. Availability and Enforcement of Criminal Sanctions	Very High	0.8
5. Availability and Effectiveness of Entry Controls	Medium High	0.6
6. Integrity of Staff in TCSP Firms	Very High	0.8
7. AML Knowledge of TCSP Firms' Staff	Very High	0.8
8. Effectiveness of Compliance Systems	Very High	0.8
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Very High	0.8

[118] The data shows that of the customers that are legal persons/arrangements, in almost all cases (98%) at least one beneficial owner or controller was physically present for identification purposes.

Comprehensiveness of AML legal framework

14.55 Legal framework is discussed in paragraphs 15.1, 15.4 and 15.5. The MLO specifies that a person carrying on financial services business must apply identification measures before carrying out a one-off transaction (or several transactions that appear to be linked) amounting to not less than EUR 1,000. The threshold can be considered as potential vulnerability, however, in line with the risk-based approach, two largest retail MSBs use a lower threshold in practice (GBP 750). Additionally, the MLO states that identification measures must be applied if ML is suspected.

14.56 The comprehensiveness of the AML/CFT framework is assessed as very high.

Effectiveness of supervision/oversight activities

14.57 The JFSC is clearly identified in the SBJL as the AML/CFT supervisory body for persons carrying on regulated business[119], including carrying on MSB.

14.58 During the period 2015 - 2018 the JFSC went through a period of structural change which included changes to its supervision approach. Whilst a low level of on-site examination activity too place over this period, as stated in section 15.1, the population of MSB's is very small (8 registered persons). The current risk based supervisory approach is more proactive and encompass a number of supervisory measures: periodic reporting, on-site inspections, meetings with MSBs staff, etc.

14.59 As part of the NRA the JFSC has recently contacted all of the entities to ask whether they are still carrying on MSB[120]. The results of this recent exercise show that a number of MSBs had not notified the JFSC that they had ceased conducting MSB. The lack of regular contact between the JFSC and the MSBs relying on the turnover exemption means that a potential vulnerability exists that the JFSC may not be sufficiently aware of these businesses' activities. However, in mitigation, the types of businesses that are in practice relying on this exemption have a low volume of small transactions (for example hotels providing currency exchange services to their guests).

14.60 A vulnerability exists because of the lack of on-site supervision by the JFSC of both registered and exempt MSBs in recent years – which was not supported by an evidential based assessment of ML/TF risk.

14.61 In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remain a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity. The effectiveness of supervision/oversight activities is assessed as medium.

Availability and enforcement of administrative and criminal sanctions

14.62 The JFSC has a range of administrative sanctions available to it via the SBJL. Criminal sanctions for failing to apply preventative measures are available via the MLO. There have been no criminal prosecutions of MSBs for failing to apply anti-money laundering requirements.

14.63 There have been two recent cases (2017 and 2018) in which the JFSC has taken regulatory action against an MSB, both cases arose from AML findings from on-

[119] Regulated business includes persons registered under the FSJL.

[120] A person taking advantage of the exemption is required by the MSB Exemptions Order to notify the JFSC if they exceed the turnover limit or cease to conduct MSB.

site examinations.

14.64 The availability and enforcement of administrative and criminal sanctions is assessed as very high.

Availability and effectiveness of entry controls

14.65 Entry controls are imposed by the JFSC at the time of registration of the firm under the FSJL. Applicants are required to demonstrate that they meet the requirements set out in the FSJL in respect of integrity, competence, financial standing, structure and organisation, fit and proper status of principal persons. The JFSC has also issued guidance on how it will assess integrity and competence for persons regulated under the FSJL.

14.66 There are 2 vulnerabilities associated with market entry controls: (i) from the beginning of 2017 to November 2019, the JFSC was unable to conduct criminal record checks as part of its assessment of principal persons (ii) MSB relying on the turnover exemption are not subject to any market entry controls; however, the ML risk associated with this group is lower due to the lower volume and size of transactions, see paragraph 15.6.

14.67 The availability and effectiveness of entry controls is assessed as medium high.

Integrity and AML knowledge of entity staff

14.68 Regulated Financial Services Business are required (see AML Handbook) to screen the competence and probity of their employees (including the Board of Directors and senior managers) at the time of recruitment and when there is a change of a role. The JFSC has also issued guidance on how it will assess integrity and competence for persons regulated under the FSJL.

14.69 Integrity of MSBs staff is considered to be very strong; staff are understood to be periodically trained on AML/CFT matters. JFSC data shows that that no disciplinary actions for serious misconduct were taken against members of MSBs' staff in the period of 2016 - 2018.

14.70 The integrity and AML knowledge of entity staff is assessed as very high.

Effectiveness of compliance functions (entity)

14.71 The following matters have been considered in making an assessment of this vulnerability: (i) fitness and propriety of MLCO and MLRO is assessed by the JFSC ("no objection" is required); (ii) compliance arrangements in MSBs depend on their size: although large MSBs are sufficiently equipped with human resources and have appropriate compliance arrangements, small MSBs, however, might not always have dedicated compliance staff, i.e. member of staff who is responsible for AML/CFT compliance might also have other responsibilities within the business. However, it should be noted that the compliance officers interviewed as a part of NRA exercise (from both retail and wholesale MSBs) demonstrated a high level of expertise.

14.72 Shortage of staff has an impact on the effectiveness of firms' compliance functions and thus is considered a vulnerability. However, the findings of the survey of consulting and law firms operating in Jersey suggest that compliance

and risk management plays an important role in their client businesses and this has provided some comfort as to the effectiveness of compliance functions generally.

14.73 The effectiveness of compliance functions is assessed as very high.

Effectiveness of Suspicious Activity Monitoring and Reporting

14.74 The fact that Jersey is a small community and that vast majority of the transactions are performed by Jersey residents assists in the identification of suspicious transactions, as counter staff will be familiar with regular customers.

14.75 Two largest retail MSBs have well developed SAR reporting procedures, their staff are well trained in how to recognise suspicious transactions. In general, wholesale MSBs conduct monitoring using various methods. Although most transactions at the retail MSBs are one-off transactions, they also conduct post event monitoring to identify any patterns or linked, suspicious or unusual transactions.

14.76 The effectiveness of suspicious activity monitoring and reporting is assessed as very high.

SECTION 15

Accountancy Sector

Key Findings:

The assessment of ML vulnerability for this sector is medium low.

The vast majority of accountants (over 80%) are members of a professional body and over 50% are sole practitioners. The sector is small; less than 4.5% of the total financial services sector revenue with the Big 4 firms dominating - nearly 70% of the income is generated by them and they employ 60% of the staff in this sector. Tax services are the most common followed by accountancy services, audit and insolvency.

Over 90% of clients are risk rated as standard or lower risk with over 85% resident in either the UK or a Crown Dependency (70% Jersey-resident)

The quality of AML controls was difficult to assess given the lack of supervisory focus in 2017 and 2018.

Overview of the accountancy sector

15.1 It is important for the understanding of many aspects of the following sector report that readers bear in mind that in Jersey accountants are not allowed to provide TCSP services unless they register separately under the FSJL to do so. At the date of this report, none have done so. Since 2000 there has been no regulatory exemption for the registration of persons carrying on trust company business who are accountants. The NRA working team therefore consider it unlikely that accountants in Jersey act as introducers of clients to other regulated sectors as they are providing a discrete service rather than a range of services. This section relates solely to the accountancy sector without TCSP services which are separately licenced. The AML vulnerabilities of the TCSP sector are discussed in a separate section of the NRA report.

15.2 Those persons who wish to provide certain Accountancy Services (in or from within Jersey) must register with the JFSC. The JFSC supervises accountancy service providers (henceforth referred to as accountants) for money laundering and the financing of terrorism only and does not carry out conduct or prudential supervision on this sector.

15.3 Accountants provide both regulated activities: (i) external Accountancy Services: (ii) advice about the tax affairs of another person; (iii) audit services; and (iv) insolvency services. Additionally, accountants provide other, unregulated, services including: advisory services (e.g. in respect of regulatory, operational and financial risk, payroll processing, transaction support); financial due diligence procedures in respect of mergers, acquisitions and other transactions; forensic services; and assistance with addressing regulatory deficiencies. According

to the data collected by the JFSC, tax services is the most common service provided by accountants, followed by Accountancy Services, audit and insolvency.

Threats in the accountancy sector

15.4 The Accountancy sector has been assessed as medium/low in relation to the ML threat to the sector. There are no recorded ML prosecutions featuring the sector, and no convictions listed. The JFSC also have no recorded cases where sanctions have been taken by them. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium/low and the size of the sector and/or its share in the economy is deemed to be low.

Vulnerabilities in the accountancy sector

15.5 The assessment of ML vulnerability for this sector is: medium low.

Inherent vulnerabilities

Total size/volume

15.6 The accountancy sector is the 6th largest (2018: 7th) in terms of revenue and the 4th largest (2018: 3rd) in terms of employee numbers. Accountants have reported having around 19,000 clients in total as at 31 December 2017 and 20,000 as at 31 December 2018. This figure is smaller than most other financial sectors[121].

15.7 The data shows that for the year ended 31 December 2017, 96% of accountants' total revenue was from regulated services, and in 2018, 89%.

15.8 The accountancy sector stands out from the other DNFBP sectors in terms of the number of sole practitioners, more than half of the population of accountants are sole practitioners.

15.9 The size of the sector is considered to be low.

Client base profile

15.10 The client base is broadly split into two parts: local clients and non-local clients. Local clients will be Jersey resident individuals, or legal persons and arrangements owned by Jersey residents (for example, trading companies for local businesses). The non-local client base is likely to include clients of TCSPs and fund services businesses. No data is available to quantify the proportion of clients that are also clients of TCSPs, although the NRA working team estimate that for the larger firms, the proportion of clients that are funds or clients of TCSPs may exceed 50%.

15.11 The data collected by the JFSC showed that for the year ended 31 December 2017, only 8% (2018: 7%) of the total client base were considered by accountants to be higher risk, with 28% (2018: 31%) being rated standard risk and 64% (2018: 62%) being lower risk. Approximately 3% of clients in both 2017 and 2018 were, or were connected with, foreign PEPs. 1 large firm and 1 medium sized accountancy firm reported a total of 5 clients connected to an enhanced risk

[121] According to data collected by the JFSC, the largest number of customers at 31 December 2017 was in the deposit taking sector, followed by investment business, funds, TCSPs, lending by deposit takers, lending by non-deposit takers, lawyers, accountants and estate agents.

state[122]. Of the individuals who are clients or beneficial owners/controllers of clients, only 0.5% are resident in countries that feature in Appendix D2 of the AML/CFT Handbook as having three or more separate sources for risk factors.

15.12 In both 2017 and 2018 99% of clients who are individuals have been met and in 98% of cases (2018: 96%), at least one beneficial owner/controller of clients who are not individuals was physically present for identification purposes. This suggests that the vast majority of client relationships are conducted, at least at some point, on a face-to-face basis.

15.13 Analysis of the data collected by the JFSC shows that 65% (2018: 70%) of clients who are individuals and beneficial owners/controllers of clients that are not individuals are resident in Jersey. A further 17% (2018: 16%) are resident in the UK and Guernsey. The remaining 18% (2018: 14%) are spread between 88 (2018: 87) countries, with the top three by number being the USA, Switzerland and Kuwait (each being less than 2% of the total).

15.14 In both 2017 and 2018 one third of clients are individuals (93% of which are resident in Jersey) and of the clients that are legal persons and arrangements, 65% (2018: 64%) are Jersey companies.

15.15 Most (87% (2018: 80%)) of the clients that are resident outside of Jersey, Guernsey and the UK are clients of the larger accountancy firms, which corroborates the perception that the smaller firms mainly provide services to local clients.

15.16 When considering the inherent vulnerability of the client base, the NRA working team took the view that a different vulnerability was likely to exist in respect of the two types of client base: local (lower vulnerability) and non-local (likely higher vulnerability). Therefore, it was thought that when considering the inherent vulnerability of the client base as a whole, the vulnerability is considered to be medium.

Use of agents

15.17 The use of agents by accountants is considered not to exist.

Level of cash activity

15.18 The data collected by the JFSC showed only 4 firms had cash transactions with an average value of less than GBP 300 in 2017 and GBP 439 in 2018. The NRA working team believe that these transactions are likely to represent fees paid to accountants in cash. They are considered to be insignificant in the context of the overall transactions conducted by the sector.

15.19 The inherent vulnerability relating to the level of cash activity in the accountancy sector is assessed as low.

International transactions

15.20 International transactions occur in the context of accountants in Jersey being asked to provide tax advice or other services to a client of their network, as part of a larger transaction. The view of the NRA working team is that only the largest firms are likely to be involved with cross-border work. This is supported by data

[122] An enhanced risk state is one which the FATF has identified as having failed to address their own ML and TF risks and/or have in place insufficient AML/CFT regimes, in relation to which it has called for the application of countermeasures. As at 31 December 2018 Iran and North Korea were considered to be enhanced risk states.

collected by the JFSC, which shows that almost 90% (2018: 78%) of clients which are resident outside of Jersey (either individuals or beneficial owners of legal persons and arrangements) are serviced by accountancy firms with more than 10 employees.

15.21 The TCSP NRA team were asked where the customers of the TCSPs obtain their tax advice from. Responses confirmed that tax advice at the time of taking on a relationship is usually obtained from a tax adviser qualified in the jurisdiction where the customer is tax resident. However, once a structure is established, tax services may be sought in Jersey periodically, especially in relation to assistance with filing Jersey or UK tax returns.

15.22 The frequency of international transactions is considered to be medium low.

Other vulnerable factors of the profession

Client accounts

15.23 Very few accountancy firms reported operating a client account (on a fully disclosed basis) (2017: 6, 2018: 7). Whilst transactions totalling around GBP 2.1m were reported for 2017, and 110 transactions totalling just over GBP 380,000 was reported in 2018. 2018 is more representative of normal activity through accountants' client accounts. Otherwise movements generally included sums likely to settle tax liabilities paid by clients to the accountancy firm, which were then onward submitted to Revenue Jersey, as well as other instances of use when providing liquidation services.

15.24 The inherent vulnerability relating to the use of client accounts is considered to be medium low.

Sole practitioners

15.25 As noted more than half of the population of accountants are sole practitioners. Sole practitioners are likely to have systems and controls that are less developed than those of larger firms, may be less able to afford external AML/CFT training, and will not have an independent compliance function. Based on data collected by the JFSC, accountants operating as sole practitioners are more likely to cater to a local client base and to provide accountancy and tax services to their clients (none offer audit services). Accountancy Services offered by a sole practitioner may simply consist of bookkeeping. Taking these two factors into account, the NRA working team consider that the inherent vulnerability relating to accountants who are sole practitioners is assessed as medium.

Anonymous use of Accountancy Services

15.26 The anonymous use of the services of an accountant is not available under the AML framework as the identity of the client must always be found out, unless an exemption applies. In addition, the data collected by the JFSC showed that in 2017 and 2018, there was limited use of the exemptions available under the MLO by accountants.

Difficulty in tracing transaction records

15.27 Records relating to transactions (i.e. the services provided by accountants) are considered to be easy to trace. Feedback from the NRA working team suggests that adequate records will be maintained by accounting firms (although this assertion has not been corroborated by the JFSC due to the lack of on-site examinations in recent years). However, the NRA working team noted that where an accountancy firm had provided a service as part of a large international transaction, while they would have obtained an understanding of the overall transaction, they would only hold the records relevant to the Jersey aspect of the transaction (and thus would not be able to make them available to law enforcement). However, other firms within the network would hold the relevant documents.

Existence of ML typologies

15.28 Typologies relating to the accountancy sector are considered to exist but are limited. The typologies that are available relate mainly to other jurisdictions, and many involve the provision of TCSP services by accountants (there are no accountants registered to conduct TCSP services in Jersey, although there are some TCSPs owned by accountants). International typologies indicate that accountants are complicit in their involvement, suggesting that accountants' expertise makes them less susceptible to innocent and unwitting exploitation relative to lawyers and TCSPs.

Use in fraud or tax evasion schemes

15.29 The possibility of using accountants in fraud or tax evasion schemes is considered to exist. Project Wickenby, a long-running investigation into tax evasion initiated by the Australian government in 2005, involved a Jersey based accountancy firm, one of the principals of which was convicted and served a jail term in Australia. The view of the NRA working team is that the introduction of the UK Criminal Finances Act 2017 has heightened accountants' awareness of the risks of facilitating tax evasion, and caused them to review their client bases to understand why clients were using Jersey for their business[123].

Non face to face use of the services

15.30 Non face to face initiation of business relationships is considered to be available but limited. In 2017 and 2018, the proportion of clients met face to face was very high (only 1% of clients who were individuals were not met, and the number of instances where at least one beneficial owner or controller of a client that is not an individual were not met was extremely small).

Control vulnerabilities

Table 15.1

Control Vulnerabilities Variables	Assessment Rating of the Accounting Sector	Accounting Score
1. Comprehensiveness of AML Legal Framework	Medium High	0.6
2. Effectiveness of Supervision Procedures and Practices	Low	0.3
3.Availability and Enforcement of Administrative Sanctions	Low	0.3

[123] The UK Criminal Finance Act 2017 amended the Proceeds of Crime Act 2002 to cover sharing beneficial ownership between the UK and Jersey.

4. Availability and Enforcement of Criminal Sanctions	Low	0.3
5. Availability and Effectiveness of Entry Controls	Low	0.3
6. Integrity of Staff in Accounting Firms	Medium Low	0.4
7. AML Knowledge of Accounting Firms' Staff	Medium	0.5
8. Effectiveness of Compliance Systems	Medium	0.5
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium	0.5

Comprehensiveness and implementation of AML legal framework

15.31 The AML legal framework that applies to accountants is fundamentally the same as that applied to all other relevant persons – one legislative regime with very few variances by industry sector. Specific vulnerabilities in the framework for accountants, include the limited 'fit and proper' test provided in the SBJL and the JFSC's inability to impose a civil financial penalty on DNFBPs. The definitions in Schedule 2 of the POCL of both audit services and insolvency services are narrowly drawn and there is some ambiguity on the reach of the provisions.

15.32 Where work is introduced to a Jersey accountant by a network member or a regulated person (such as a TCSP), the accountant may place informal reliance on the CDD conducted by the introducer (i.e. the introducer is not treated as an obliged person under Article 16 of the MLO). The NRA working team has advised that where the introducer's CDD is not up to the standard required by the Jersey AML regime, then additional CDD will be collected by the Jersey accountant.

15.33 Moneyval drew attention to the practice of informal reliance on CDD carried out by third parties in its Mutual Evaluation Report of Jersey (issued 9 December 2015) and recommended that the JFSC provide additional guidance in this area. This action has not yet been completed, therefore this represents an ongoing vulnerability.

15.34 There appears to be some ambiguity miss-understanding of the AML/CFT regime about who the Jersey firm should treat as the client where work is referred to accountancy firms in Jersey from members of their networks, i.e. whether the client is the referring firm or the underlying client of the referring firm. Whilst the latter is the correct approach (unless the advice given is generic), the perceived ambiguity has an impact on the collection of CDD and may represent a vulnerability if the requirements of the regulatory regime have been interpreted incorrectly.

15.35 The comprehensiveness of the AML/CFT framework is assessed as medium high.

Effectiveness of supervision/oversight activities

15.36 The accountancy professional bodies do not have responsibility for AML/CFT supervision of their members in Jersey, the JFSC is designated in the SBJL as the AML/CFT supervisor for accountants doing business in or from within Jersey. Additionally, all qualified accountants will be subject to supervision by their professional bodies. Accountants who are not members of a professional body will be subject to AML/CFT supervision by the JFSC only.

15.37 Following a restructure in the Supervision Division of the JFSC in 2018, the majority of accountants have been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to

drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

15.38 The JFSC continues to develop it's risk based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected.

15.39 There is no recorded on-site examination activity recorded for this sector for the period 2015 to 2018.

15.40 However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

15.41 The effectiveness of supervision/oversight activities is assessed as low.

Availability and enforcement of administrative and criminal sanctions

15.39 A vulnerability exists as the JFSC does not have as extensive a range of administrative penalties for DNFBPs as it does for financial institutions. However, a registration can also be revoked if a registered person fails to comply with any Code of Practice. In the period since 2015 there have been two administrative sanctions applied by the JFSC for AML purposes; one against an accountant who was the MLRO of an accountancy firm and the second who was a part qualified accountant who defrauded his clients

15.40 The availability and enforcement of administrative and criminal sanctions is assessed as low.

Availability and effectiveness of entry controls

15.41 The data collected by the JFSC showed that at the end of 2017, 83% of the accountants registered with the JFSC under the SBJL were a member of a professional body (2018: 86%). The professional bodies impose entry controls which generally comprise the passing of exams and being able to demonstrate adequate relevant practical experience. Prospective members are also required to confirm that they have not been subject to any criminal conviction. Thus an entry control exists for qualified accountants. However, a person can provide Accountancy Services without holding a professional qualification or being a member of a professional body. In addition, a vulnerability exists as the regulatory entry controls for accountants (firms and sole practitioners) by the JFSC are limited. There is no criminality test on Level 2 applicants and the JFSC has a limited ability to refuse an application for registration.

15.42 The availability and effectiveness of entry controls is assessed as low.

Integrity and AML knowledge of entity staff

15.43 Feedback from the NRA working team suggests that accountants act professionally and with integrity and comply with their legal requirements under the POCJL and MLO. There are two local examples of accountants acting without integrity, however, both cases being more than 10 years old and in those cases the accountant was acting in another capacity, e.g. as a director of a trust company

15.44 Feedback from the NRA working team indicated that AML/CFT training on offer for accountants tends to be generic (although tailored training can be requested and obtained). AML typologies relevant to accountants are limited, and there are few typologies available that relate specifically to Jersey, many typologies for accountants focus on the provision of TCSP services for which a separate registration is required in Jersey.

15.45 The integrity of entity staff is assessed as medium low.

15.46 AML knowledge of entity staff is assessed as medium.

Effectiveness of compliance functions (entity)

15.47 The following matters have been considered in making an assessment of this vulnerability. Accountants are required by the MLO to appoint an MLCO and MLRO. The large and medium sized firms are likely to employ independent compliance staff. However, where an accountant is a sole practitioner, all AML functions have to be carried out by the same person. Given that more than half of all accountancy firms are sole practitioners, this represents a vulnerability.

15.48 Data taken from the Government's private sector survey indicated the numbers 16.of: (i) applications from potential clients that had been declined, and (ii) client relationships that had been terminated. There, were 22 spanning 2017 and 2018 and all from firms with more than 10 employees. No firm conclusions can be drawn on the basis of this information as only 20% of the population of accountancy firms responded to the survey.

15.49 The view expressed by the NRA working team is that there is a shortage of compliance staff on the Island. Such a shortage will have an impact on the effectiveness of firms' compliance functions and should be considered a vulnerability.

15.50 The effectiveness of compliance functions is assessed as medium.

Effectiveness of Suspicious Activity Monitoring and Reporting

15.51 The JFCU have advised that the quality of SARs received from the larger accountancy firms is generally good. In the view of the NRA working team, the fact that most accountancy firms are small to medium sized businesses, which might be expected to cater for a mainly local, lower risk client base, may account for the small proportion of SARs made by this sector compared to the total.

15.52 The effectiveness of accountants' monitoring and reporting procedures has not

been tested by the JFSC in recent years due to the lack of on-site supervision, and thus there is not any independent evidence of their adequacy.

15.53 The effectiveness of suspicious activity monitoring and reporting is assessed as medium.

SECTION 16

Lending Sector (non-bank)

Key Findings:

The most material activity in the non-bank lending sector is carried out by entities under private ownership. These lenders are required to register with the JFSC under the SBJL for AML supervisory purposes at level 1.

The principal AML threat in this sector is not from borrowers but from lending the proceeds of crime.

The assessment of ML vulnerability for Lending sector is medium low.

Overview of the lending[124] sector

16.1 This section of the NRA covers the activity of lending: it excludes lending by banks that are registered as deposit takers in Jersey, but does include banks and building societies that offer lending services in Jersey but which are not authorised by the JFSC under the Banking Business (Jersey) Law 1991 (BBJL) (but which are authorised as banks in another jurisdiction) and persons carrying on financial leasing. Financial Leasing forms a very small part of the lending sector. The total amounts lent by this sector are significantly lower than the value of loans made by the deposit-takers.

16.2 Those persons who wish to provide lending services in or from within Jersey must register with the JFSC as required by the provisions of the SBJL, at Level 1, unless they are also carrying on a regulated business[125], in which case they are not required to make an application but must notify the JFSC that they are carrying on lending activity; unless they are a TCSP relying on the notification exemption (see 17.9).

16.3 The JFSC supervises lenders for money laundering and the financing of terrorism only and does not carry out conduct or prudential supervision on this sector.

16.4 The population of registered lenders includes banks and building societies that do not undertake deposit-taking activities in Jersey, as well as lenders that are owned by banks or private individuals. Approximately one third (2018: 40%) of lenders are banks or owned by banks, and two thirds (2018: 60%) are privately owned.

16.5 The nature of the lending activities includes personal/consumer loans (including vehicle finance), asset backed finance, as well as business loans and property lending, including mortgages and bridging finance. Consumer lending is mostly

[124] The terms 'lenders' and 'lending' should be understood to include financial leasing.
[125] Regulated business includes businesses registered under the BBJL and FSJL.

short term (1-5 years) and unsecured (except for vehicle loans and mortgages).

16.6 The vast majority of borrowers are resident in Jersey, the UK, Guernsey and the Isle of Man, and the client base consists mainly of individuals.

16.7 The main ML vulnerability arises not from the borrowers, but more likely from the lenders (for example, lenders lending the proceeds of crime).

Regulated activities

16.8 The SBJL captures those persons who are in the business of providing lending services, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting), as well as financial leasing, to third parties[126].

16.9 The SBJL provides that where a person conducting a Schedule 2 activity (a) is provided with any service that falls within Article 2(3) and (4) of the FSJL by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of the FSJL) by a person who is registered under that Law to carry on funds services business, and (b) has no established place of business in Jersey other than a place of business provided by a person who is registered under the FSJL to carry on trust company business or fund services business, then that activity does not fall within the definition of 'specified Schedule 2 business'.

16.10 Data collected by the JFSC shows that as at 31 December 2017, there were 8 persons undertaking lending that were administered by TCSPs and thus were not required to register with the JFSC. All of the lenders are Jersey companies. As at 31 December 2017 there were less than 100 loans outstanding with a value of approximately GBP 36.5m. All of the loans except one were to borrowers in the UK. In all cases the TCSPs are providing full administration services to the companies and are required to apply their normal AML policies and procedures to their clients.

Unregulated activities

16.11 The activity of brokering loans, i.e. matching a lender and a borrower, is not caught within the AML regulatory regime. It is not known how many persons are providing this service in Jersey by way of business, whether independently or alongside another activity. However, the data collected by the JFSC shows that during 2017, the lenders are being refferred business with around 95% of the referrers being based in Jersey.

Threats in the lending sector

16.12 The assessment of ML threat for this sector is: medium/low.

16.13 From the data collected there were 2 ML investigations involving the sector and 4 cases where there was an investigation of a predicate offence only. The JFSC recorded no cases that were investigated in this sector. There are no recorded ML prosecutions featuring the sector, and no convictions listed; the JFSC also have no recorded cases where sanctions have been taken by them. Data collected by the FIU using a selection of SAR intelligence where there was a typology of potential money laundering, identified no cases where there was

[126] Third parties do not include connected companies, as defined in Article 7(3) of Part B of Schedule 2 of the POCJL. Thus lending between companies in the same group would not require registration under the SBJL. The size of this activity is not known.

intelligence suggesting that there was evidence of a predicate offence. LOD statistics indicate that there were no prosecutions of complex financial crime and ML. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium/low and the size of the sector and/or its share in the economy is deemed to be low.

16.14 With low interest rates being offered by banks the emergence of peer to peer lending is considered to have grown in volume but there is little or no statistical data available to accurately assess the extent of such lending

Vulnerabilities in the lending sector

16.15 The assessment of ML vulnerability for this sector is: medium low.

Inherent vulnerabilities

Total size/volume

16.16 As at 31 December 2017, there were 31 lenders registered with the JFSC, of which one also carried on financial leasing. As at 31 December 2018, the number of registered lenders had fallen to 28 of which four persons indicated that they were conducting financial leasing.

16.17 Considering the above, the size of the sector is considered to be low.

Client base profile

16.18 The data collected by the JFSC shows that the client base[127] is largely individuals (93% (2018: 91%)) and, of the individuals, 91% (2018: 92%) are Jersey resident. 2% of the total value of loans outstanding were outstanding to customers that are, or are connected to, PEPs. There are no customers that are connected to enhanced risk states.

16.19 The data shows that 94% (2018: 91%) of Jersey resident individuals have been met, while only 4% (2018: 20%) of non-Jersey resident individuals have been met. With regard to legal persons and arrangements, in 75% (2018: 98%) of cases there was at least one beneficial owner/controller who had been physically present for identification purposes.

16.20 The inherent vulnerability of the client base is considered low.

Use of agents

16.21 The only use of agents in the sector is where brokers are used to introduce business. Brokers cannot commit a lender and lenders must carry out their own CDD and do not rely on a broker. Brokers introducing lenders whose funding is from outside Jersey is considered an emerging vulnerability.

16.22 The inherent vulnerability in respect of the use of agents is assessed as medium low.

Level of cash activity

16.23 Cash transactions will likely only arise in the context of loan repayments,

[127] Overall, 67% (2018: 70%) of customers were considered by lenders to be standard risk and 33% (2018: 30%) to be lower risk. Less than 1% of customers were assessed as higher risk in both years. In practice, the risk relating to consumer lending clients is likely to be lower because the borrowers are local and the amounts are of a low value. A small number of customers (20 (2018: 36)) are regulated for AML/CFT purposes.

however lenders will not accept large amounts of cash. The amount of cash is insignificant compared to the value of loans outstanding. The JFSC data shows that in 2017 and 2018 lenders reported a total of just under 2,000 (2018: just under 850) cash transactions with an average size of transaction of just over GBP 200 (2018: approximately GBP 380).

16.24 The inherent vulnerability relating to the level of cash activity in the lending sector is assessed as low.

Frequency of international transactions

16.25 The vast majority of customers are Jersey resident individuals, Jersey companies and trusts with Jersey trustees with these borrowers accounting for 92% (2018: 86%) of the value of loans made.Almost all of the individual customers that are not Jersey resident are customers of private lenders. After Jersey, most customers or beneficial owners/controllers of customers were resident in the UK, Isle of Man and Guernsey, with very small numbers resident in other countries.

16.26 The source of lenders funds is likely to be from outside Jersey. For example, lenders associated with banks will be funded from another part of their group (eg UK and Guernsey). Sourcing funds from other parts of a regulated group is considered to be less of a vulnerability than from private sources. Also, even where funds have been sourced from overseas, they will have been transmitted via the banking system who can be considered to be the gatekeepers which mitigates the vulnerability to an extent.

16.27 The inherent vulnerability relating to international transactions is considered to be low.

Other vulnerable factors of the sector

Anonymous use of lending services

16.28 The anonymous use of the services of a lender is not available under the AML framework. JFSC data shows that in 2017 there were only 2 (2018: 3) lenders that had relied on Article 18 of the MLO to apply simplified due diligence measures. In all cases the concession was used where the customer is a regulated person, or who carries on equivalent business.

Difficulty in tracing transaction records

16.29 Records relating to transactions are considered to be easy to trace. Most transactions will be via the banking system, and where cash transactions do take place, these will be of a low value and recorded by the lender.

Existence of ML typologies

16.30 Typologies relating to the lending sector are considered to exist but are limited. A typology relevant to Jersey would be that of a wealthy individual whose wealth is derived from the proceeds of crime, lending their funds out and receiving ‘clean’ money by way of repayment. The UK Joint Money Laundering Steering Group has published guidance for providers of consumer credit and asset

finance that identifies acceleration of prepayment schedules, either by means of lump sum repayments, or early termination/settlement, as a money laundering risk.

Use in fraud or tax evasion schemes

16.31 The possibility of using lenders in fraud or tax evasion schemes is considered to exist. The risk of fraud is likely to be higher than that of tax evasion. For example, at the high value/luxury end of the market, there is a vulnerability to VAT arbitrage.

Non face to face use of the services

16.32 Non face to face initiation of business relationships is considered to be available, but limited. Non face to face is more common for non-Jersey customers.

Private lending

16.33 The funding of private lending[128] is regarded as an inherent vulnerability. Approximately two thirds of the lenders registered with the JFSC are privately owned and the amount of loans outstanding from private lenders is around 25% (2018: 30%) of the total.

16.34 The JFSC has not to date routinely asked for source of funds information at the time of authorisation, and has not collected data on how lenders are funded[129], this adds to the vulnerability in this area.

16.35 The private lending market is attractive to borrowers who may not be able to obtain loans from banks. This might suggest that the client base is riskier than that of the bank owned lenders however, where a borrower has a poor credit history or low level of income this is not necessarily an indicator of a higher ML risk it is more likely to be an indicator of higher level of default risk. Private lenders have rated only around 1% of their customers as higher risk of ML as at 31 December 2017 and 2018.

16.36 A further consideration relevant to the assessment of private lending is that private lenders may be less likely to register with the JFSC and to operate 'under the radar'. This may be because they do not believe they are "in the business of lending".

16.37 The inherent risk arising from private lending is considered to be medium.

Control vulnerabilities

Table 16.1

Control Vulnerabilities Variables	Assessment Rating of the Lending Sector	Lending Score
1. Comprehensiveness of AML Legal Framework	Medium	0.5
2. Effectiveness of Supervision Procedures and Practices	Low	0.3
3.Availability and Enforcement of Administrative Sanctions	Medium	0.5
4. Availability and Enforcement of Criminal Sanctions	Medium Low	0.4

[128] Private lending occurs where private lenders, rather than banks or finance companies, provide loans to borrowers.
[129] A person who provides funding to a lender is not a client of that lender from AML/CFT point of view.

5. Availability and Effectiveness of Entry Controls	Medium	0.5
6. Integrity of Staff in Lending Sector Firms	Medium	0.5
7. AML Knowledge of Lending Sector Firms' Staff	Medium	0.5
8. Effectiveness of Compliance Systems	Medium	0.5
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium Low	0.4

Comprehensiveness of AML legal framework

16.38 The regulatory regime does not include loan/mortgage brokers. Whilst some of this activity is carried out by firms regulated for investment business, the activity itself is unregulated. A vulnerability exists due to this gap in the regulatory framework. One mitigant that may apply is that it is likely that a lawyer will be involved in drawing up a loan contract or in registering security.

16.39 The AML regime requires those who are in 'the business of' lending to register with the JFSC.

16.40 Lastly, it should be noted that there is no sector-specific AML Handbook for the lending sector. Lenders are expected to look to the Handbook for Regulated Financial Services Business for guidance. The lack of guidance tailored specifically for this sector can be considered a vulnerability.

16.41 The JFSC does not have a full picture of the lenders in Jersey as those administered by a trust and company services provider are not required to register with the JFSC.

16.42 The comprehensiveness of the AML/CFT framework is assessed as medium.

Effectiveness of supervision/oversight activities

16.43 The JFSC is clearly identified in the SBJL as the AML supervisory body for lenders. During the period 2015-2018 the JFSC went through a period of structural change which included changes to its supervision approach.

16.44 Following a restructure in the Supervision Division of the JFSC in 2018, the majority of lenders have been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

16.45 The JFSC continues to develop it's risk-based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected.

16.46 A low level of on-site examination activity was undertaken for this sector prior to 2018.

16.47 However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of

its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

16.48 Although in 2018 the JFSC commenced collecting data[131] systematically from supervised entities, it has made limited use of this information, due to resourcing issues. A vulnerability in respect to data exists because (i) the data collection has commenced only recently and thus there is no history of data to draw upon, (ii) much of the data has been collected on a 'best endeavours' basis and may be incomplete, and (iii) the data has not yet been fully analysed and used to inform the supervision of regulated entities. Accordingly, supervisory resources may not be focussed where risk is greatest.

16.49 There is anecdotal evidence that unauthorised lending[132] is taking place in Jersey in the private market. However, the JFSC does carry out certain policing the perimeter activity, which has not identified any recent unauthorised lending activity.

16.50 The effectiveness of supervision/oversight activities is assessed as low.

Availability and enforcement of administrative and criminal sanctions

16.51 The JFSC has a range of administrative sanctions available to it via the SBJL. However, the JFSC is unable to apply civil financial penalties to lenders, as the regime does not extend to this sector.

16.52 Between 2016 and 2018 regulatory action was taken against lenders, which included: (i) following an on-site examination, a period of heightened supervision by the JFSC, during which the lender was required to give the JFSC an undertaking that it would not take on any new lending clients; (ii) an investigation by Enforcement, which led to the lender revoking its registration; and (iii) an entity that was undertaking unauthorised lending was required to register, followed by an on-site examination which gave rise to some AML findings. There have been no subsequent administrative sanctions applied to lenders by the JFSC for AML purposes.

16.53 Criminal sanctions for money laundering are available via the POCJL, and for failing to apply preventative measures via the MLO. There have been no criminal prosecutions of lenders for money laundering offences.

16.54 A vulnerability exists as the JFSC does not have as extensive a range of administrative penalties for businesses registered for Schedule 2 activity as it does for financial institutions.

16.55 The availability and enforcement of administrative and criminal sanctions is assessed as medium (administrative sanctions) and medium low (criminal sanctions).

Availability and effectiveness of entry controls

16.56 Entry controls are imposed by the JFSC at the time of registration of the lender under the SBJL. Registration is at Level 1 and the applicant is required to provide the JFSC with specific information which includes the applicant's name, description of business to be carried on, principal address, details of Principal and Key Persons, Business Risk Assessment and confirmation that AML/CFT

[131] Such data included organisational/footprint data, AML/CFT compliance data (including data relating to financial sanctions, monitoring and key risk indicators), data about a regulated entity's customers and their beneficial owners and controllers, and data about use of concessions available in the MLO.

[132] i.e. the lender has not registered with the JFSC.

policies and procedures are in place.

16.57 The SBJL requires a limited criminality test to be carried out by the JFSC for a Level 1 registration. Applicants are required, when making their application, to make a declaration that neither they, nor a principal person or key person, has been convicted of any of the offences set out in the SBJL. The SBJL provides that a person who knowingly or recklessly provides the JFSC with information that is false or misleading in a material particular shall be guilty of an offence and liable to imprisonment for a term of 5 years and a fine. Subsequent changes to any information supplied at the time of application are required by the SBJL to be notified to the JFSC as soon as possible. Failure to supply such information without reasonable excuse is an offence and carries a penalty of imprisonment for a term of two years and a fine.

16.58 The availability and effectiveness of entry controls is assessed as medium.

Integrity and AML knowledge of entity staff

16.59 Feedback from the NRA working team suggests that lenders act with integrity. Lenders should be aware of their vulnerability to both money laundering and fraud, and thus are likely to act to reduce these vulnerabilities by vetting staff as part of the recruitment process. Also, those lenders that are banks or are owned by banks will have internal audit functions that would pick up any failures in controls.

16.60 Smaller firms are perhaps less likely to be able to resource in-house AML training or to find affordable external AML training.

16.61 Data collected by the JFSC from lenders in respect of the years 2016 to 2018 showed that only two disciplinary actions were taken against members of staff in the three-year period for serious misconduct.

16.62 The integrity and AML knowledge of entity staff is assessed as: integrity: medium, AML knowledge: medium.

Effectiveness of compliance functions (entity)

16.63 The following matters have been considered in making an assessment of this vulnerability: (i) approximately one third of lenders are associated with banks and are consequently subject to their control systems; (ii) it is likely that private lenders will have less formalised arrangements for compliance, however, all lenders are required by the MLO to appoint a MLCO and MLRO and due to the nature of their activities do not require a large compliance team. A vulnerability arises in respect of private lenders, who may be offering more complex or risky lending products, with a very small number of staff, and thus no dedicated compliance function.

16.64 Taking into account the difference in effectiveness between bank associated lenders and small private lenders, the effectiveness of compliance functions is assessed as medium.

Effectiveness of Suspicious Activity Monitoring and Reporting

16.65 The effectiveness of suspicious activity monitoring and reporting is assessed as medium low.

SECTION 17

Immovable Property Sector

The assessment of ML vulnerability for this sector is: low.

Whilst it is acknowledged that the property sector can be vulnerable to money laundering, there are a number of mitigating factors present in Jersey:

- Almost all clients are met face to face;
- Almost all transactions (including those where an estate agent is not engaged) involve at least one other person e.g. a Jersey lawyer or financial institution;
- Estate agents do not handle any funds when dealing with the sale/purchase of a property;
- The purchase and occupation of residential property is regulated and supervised by the Population Office.

Overview of the estate agency sector

17.1 Those persons who wish to provide estate agency services in or from within Jersey, must register with the JFSC as required by the provisions of the SBJL. Registration is at Level 2. Persons carrying on the activity of property management in respect of immovable property that is situated outside Jersey, or who collect or handle rent and tenancy deposits, must also register with the JFSC. Registration is at Level 1. The JFSC supervises estate agents and property managers (as defined above) for money laundering and the financing of terrorism only and does not carry out conduct or prudential supervision on this sector.

17.2 Estate agents may act for the sellers or purchasers but are not required to do so. The purchase or sale of a property may take place without an estate agent, and it has been estimated by a local law firm that 15-20% of property sales are private and do not involve an estate agent. Of these, the vast majority are inter-family transactions or sales by landlords to sitting tenants.

17.3 There is no land registry in Jersey that evidences title to land, or other method of certifying title to property. A public register exists that records all transactions that have taken place through the Royal Court, but it does not guarantee title to property. A consequence of this is that the purchase and sale of all land in Jersey must involve a lawyer to confirm title.

17.4 Ownership and occupation of residential property in Jersey is subject to the Control of Housing and Work (Jersey) Law 2012 (CHWL). The CHWL is enforced by the Population Office[133].

[133] The Population Office is the government department responsible for regulating migration within Jersey in terms of who is entitled to live and work in the Island.

17.5 Estate agents in Jersey do not handle any cash when involved in the purchase or sale of a property, this is done by the lawyers, who will receive the funds from the purchaser into their client account before it is transferred to the vendor.

17.6 As at 31 December 2017, there were 47 estate agents registered with the JFSC. This figure had fallen to 44 by 31 December 2018.

Threats in the property sector

17.7 The Estate Agents sector has been assessed as medium/low in relation to the ML threat to the sector. From the data collected there were no ML investigations involving the sector and no cases where there was an investigation of a predicate offence only. The JFSC recorded one single case that was investigated in this sector. There are no recorded ML prosecutions featuring the sector, and no convictions listed, the JFSC also have no recorded cases where sanctions have been taken by them. Data collected by the FIU using a selection of SAR intelligence where there was a typology of potential money laundering, identified no cases where there was intelligence suggesting that there was evidence of a predicate offence. LOD statistics indicate that there were no prosecutions of complex financial crime and ML. The estimation of ML activities that occur in the sector but are not or cannot be detected, is deemed to be medium/low and the size of the sector and/or its share in the economy is deemed to be medium. During the data collection period 21 SARs were submitted by the estate agent/ property management sector. Criminals and professionals may target estate agents to purchase and sell property in order to launder funds. Jersey property is an attractive asset for criminals to invest their money, especially involving high net worth individuals. Estate agents perceive that greater risk is with legal professionals who are closer to the client and their funds.

Vulnerabilities in the property sector

Inherent vulnerabilities

Total size/volume

17.8 Data collected by the JFSC as at 31 December 2017 and 2018 showed that the sector is dominated by sole practitioners (2017: 30%, 2018: 39&) and small businesses (5 or less employees) (2017: 45%, 2018: 42%)

17.9 Most property transactions reported by estate agents in 2017 and 2018 related to Jersey property and involved Jersey resident individuals. Given the finite supply of properties and people on the Island (Jersey having a population of approximately 106,800 at 31 December 2018[134]) restricts the size of the sector.

17.10 The total value of property and land transactions for 2017 was GBP 1,1bn (2018: GBP 1,2bn) (excluding commercial property share transfer transactions).

17.11 Commercial property transactions through the Royal Court in 2017 amounted to a value of GBP 102m (71 transactions). The equivalent in 2018 was 85 transactions with a value of GBP 58m). Data in respect of commercial property transactions that were by share transfer through companies is not available, as it is not collected by the Jersey government.

[134] https://www.gov.je/Government/JerseyInFigures/Population/Pages/Population.aspx

17.12 There were 88 (2018: 58) transactions in respect of land, with a value of GBP 7.5m (2018: GBP 4m).

17.13 In terms of employment, those estate agents that responded to the JFSC's data collection exercise reported a total of around 130 employees. Given that the response to the data collection was incomplete, a simple extrapolation suggests that total employees in the sector are around 200 – but it is not known how accurate this estimate is. This compares to over 13,000 persons employed in the finance sector as at 31 December 2018 (according to Statistics Jersey).

17.14 The size of the sector is considered to present a low risk.

Client base profile

17.15 The inherent vulnerability of the client base as a whole is considered low. In 2017 97% of clients were reported as either a Jersey individual or company (2018: 96%) with the majority of clients considered to be standard or lower risk (2017: 92%, 2018: 95%).

17.16 The data does not include sales by property developers, as they were outside the scope of the JFSC's data collection exercise. In discussion with members of the NRA working team, the two largest property developers in Jersey (who do their own marketing and do not use estate agents) advised that the vast majority (over 99%) of their residential units are sold to Jersey residents.

17.17 7% (2018: 4%) of transactions by estate agents related to commercial property, of which 33% (2018: 57%) were for individuals (most being Jersey resident) and 67% (2018: 43%) for legal persons (90% (2018: 100%) being Jersey companies.

17.18 Only one estate agent reported having been involved with a transaction relating to property outside Jersey.

17.19 JFSC data shows that there were no clients that were foreign PEPs in 2017 or 2018. No estate agents have reported clients with connections to enhanced risk states.

High Value Residents

17.20 Each year a small number of high net worth individuals apply to the Population Office through Locate Jersey[149] for permission to relocate to Jersey as a High Value Resident (HVR). In 2018, 14 approvals were given (2017: 34). In recent years, approximately 85% of applicants have been British citizens, with the remaining 15% spread between mostly European countries, including a very small number from Russia. Many of the non-British applicants are resident in the UK (i.e UK resident non-domiciled). An applicant must have a sustainable income of in excess of GBP 725,000 pa, agree to pay a minimum amount of GBP 145,000 income tax in Jersey per year, and buy or rent a property above a value of GBP 1.75m. The last point is important as the HVR will become a client of a Jersey estate agent.

17.21 An evaluation process is undertaken by Locate Jersey and the Population Office before residential status is granted. Not all applications are approved, with five in total having been declined in 2017 and 2018, mainly for reputational reasons. Vulnerabilities exist with respect to HVRs. Overall, the number and value of

[135] Locate Jersey is the Government department that deals with high net worth individuals and businesses looking to move themselves and their operations to Jersey.

property transactions undertaken by HVRs is small compared to the overall residential market.

17.22 The inherent vulnerability of the client base as a whole is considered low.

Use of agents

17.23 The use of agents does not exist in the property sector. There is no inherent vulnerability arising.

Level of cash activity associated with the sector

17.24 The data collected by the JFSC shows that the use of cash by estate agents in 2017 and 2018 was minimal. In practice, all funds relating to the purchase and sale of properties are handled by lawyers and not estate agents. The inherent vulnerability relating to the level of cash used in the immovable property sector is assessed as low (for estate agents: does not exist, for property managers: low).

Frequency of international transactions

17.25 The data collected by the JFSC shows that in 2017, in respect of the estate agents that responded, only one transaction took place that involved a property situated outside Jersey. The 2018 data shows there were no transactions in respect of non-Jersey property. Between 3% and 4% of estate agents' clients in 2017 and 2018 were non-Jersey resident individuals or legal persons.

17.26 It is not uncommon to see Jersey estate agents advertising property for sale that is situated overseas, generally in France or Portugal. The NRA working team have advised that in these circumstances, the estate agents are providing an advertising service only, and that any potential purchasers are referred to the estate agent that is acting for the vendor in the relevant country. The Jersey estate agent will receive a fee only when the property is sold. The fee may vary depending on the value of the property.

17.27 The frequency of international transactions is considered to be low.

Other vulnerable factors of the profession

Anonymous use of estate agent services

17.28 Anonymous use of the services of an estate agent is not available under the AML framework as the identity of the client must always be found out, unless a concession applies. However, both the NRA working team and the JFSC is aware of situations where an estate agent has not found out the identity of the beneficial owner or controller of a client that is a legal person. Depending on their business model some property managers are not subject to AML/CFT regulation and the JFSC has no data on whether anonymous use of their services exists. However, the NRA working team noted that a property manager will need to know the identity of their client in order to contact them regarding maintenance of their property. Thus, it is considered unlikely that anonymous use of the services of property managers exists.

Difficulty in tracing transaction records

17.29 Records relating to property transactions are considered to be easy to trace. Freehold and flying freehold transactions are recorded by way of a contract that is passed before the Royal Court, and lawyers are involved in all property transactions, as well as other parties such as estate agents, banks and providers of finance. Record keeping by property managers has not been tested by the JFSC but is assumed to be adequate on the basis that they are required to account to their clients for all monies received and paid.

Existence of ML typologies

17.30 Typologies relating to the property sector are considered to exist but are limited. They mainly relate to other jurisdictions, and typologies relating specifically to Jersey are rare. The AML/CFT Handbook for Estate Agents and High Value Dealers sets out a number of examples of the ways in which the services of estate agents can be abused by criminals.

Use in fraud or tax evasion scheme

17.31 The possibility of using estate agents and property managers in fraud or tax evasion schemes is considered to exist but is limited.

Non face to face use of the services

17.32 Non face to face initiation of business relationships is considered to be available but limited. The data collected from estate agents by the JFSC showed that in 2017 and 2018, the proportion of clients met face to face was very high (less than 1% of clients who were individuals were not met face to face, and the number of instances where at least one beneficial owner or controller of a client that is not an individual were not met was extremely small). No data has been collected in respect of whether non face to face initiation of business relationships exists in the case of standalone property managers.

Control vulnerabilities

Table 17.1

Control Vulnerabilities Variables	Assessment Rating of the Lending Sector	Lending Score
1. Comprehensiveness of AML Legal Framework	High	0.7
2. Effectiveness of Supervision Procedures and Practices	Low	0.3
3.Availability and Enforcement of Administrative Sanctions	Low	0.3
4. Availability and Enforcement of Criminal Sanctions	Low	0.3
5. Availability and Effectiveness of Entry Controls	Very Low	0.2
6. Integrity of Staff in Lending Sector Firms	Medium Low	0.4
7. AML Knowledge of Lending Sector Firms' Staff	Low	0.3
8. Effectiveness of Compliance Systems	Medium	0.5
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium High	0.6

Comprehensiveness of AML legal framework

17.33 The AML legal framework that applies to estate agents and property managers (with exemptions) is fundamentally the same as that applied to all other relevant persons – one legislative regime with very few variances by industry sector.

17.34 There is a potential vulnerability in this sector because property developers are not subject to the AML/CFT supervisory regime as they do not meet the definition of estate agency services. A property developer may have its own marketing team and thus not use the services of an estate agent. In practice, both the property developer and the purchaser of the property would use their own Jersey lawyer. It is also likely that a bank or other financial institution would be involved in the transaction by providing finance to the purchaser of the property.

17.35 A further potential gap in the regulatory regime relates to letting agents who deal with high value leases (both residential and commercial). The 5th EU Money Laundering Directive has amended the definition of businesses in scope to include estate agents when "acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10,000 or more". This prescriptive position is not present in the Jersey regime, however, a person collecting rents is considered to be subject to the AML regime as they are otherwise investing, administering or managing funds or money on behalf of third parties so there may not be a gap. Feedback from the NRA working team indicates that such high value leases are available in Jersey, both residential and commercial. This will include HVRs who are permitted to rent for a period before purchasing a property.

17.36 The activity of some property managers is outside the scope of the AML/CFT regulatory regime, as long as the property is situated in Jersey and the property manager does not handle any funds apart from service and maintenance charges. This is because true property management of a Jersey-based property is considered to carry a low vulnerability to AML/CFT.

17.37 The comprehensiveness of the AML/CFT framework is assessed as high.

Effectiveness of supervision/oversight activities

17.38 The JFSC is clearly identified in the SBJL as the AML/CFT supervisory body for estate agents. During the period 2015-2018 the JFSC went through a period of structural change which included changes to its supervision approach.

17.39 Following a restructure in the Supervision Division of the JFSC in 2018, estate agents have been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

17.40 The JFSC continues to develop it's risk-based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected.

17.41 Whilst there was no on-site examination activity recorded for the period 2016 to 2018, a thematic examination was undertaken over 2017/2018 of stand-alone property managers and letting agents. 22 persons formed part of the examination. In addition, in 2017 an outreach event was held by the FSC focusing on AML/CFT, attended by around 80% of the estate agents registered with the JFSC.

17.42 However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

17.43 The effectiveness of supervision/oversight activities is assessed as low.

Availability and enforcement of administrative and criminal sanctions

17.44 The JFSC is unable to apply civil financial penalties to estate agents, as the regime does not extend to this sector. There have been no administrative sanctions applied to estate agents by the JFSC for AML purposes. There have been no criminal prosecutions of estate agents for money laundering offences. The availability and enforcement of administrative and criminal sanctions is assessed as low.

Availability and effectiveness of entry controls

17.45 There are no industry specific entry controls, for example a person wishing to set up in the business of providing estate agency services does not need to hold a recognised qualification or have any relevant experience. Entry controls are imposed by the JFSC at the time of registration of the estate agent under the SBJL. A vulnerability exists as the entry controls for estate agents are very limited. There is no criminality test on Level 2 applicants and the JFSC has a limited ability to refuse an application for registration. There are no industry-imposed controls on entry.

17.46 The regulatory entry controls for property managers administering or managing funds on behalf of third parties are more stringent as they must register at Level 1 of the SBJL. The SBJL requires the applicant to confirm whether they, any principal person or key person has been convicted of certain offences[136]. Unlike a Level 2 application, the JFSC has the power to refuse a Level 1 application on the grounds that the applicant, or a principal or key person, is not fit and proper.

17.47 The availability and effectiveness of entry controls is assessed as very low.

Integrity and AML knowledge of entity staff

17.48 Feedback from the NRA working team suggests that staff in estate agencies act professionally and with integrity.

17.49 There is a perception in the NRA working team that compliance with AML

[136] As set out in Article 14(4) of the SBJL.

requirements is not conducted uniformly by all estate agents. It was noted by MONEYVAL in their Mutual Evaluation Report on Jersey dated 9 December 2015, that "interviews with real estate agencies did not demonstrate a good level of understanding of the CDD obligations". AML typologies relevant to estate agents are limited, and there are few typologies available that relate specifically to Jersey.

17.50 The integrity and AML knowledge of entity staff is assessed as integrity: medium low, AML knowledge: low.

Effectiveness of compliance functions (entity)

17.51 There is little evidence available from which to draw a conclusion on the effectiveness of the compliance functions in this sector – which itself represents a vulnerability. The data collection exercise carried out by the JFSC requested information on the numbers of applications from potential clients that had been declined, and client relationships that had been terminated, for CDD or other financial crime concerns, during 2017 and 2018.

17.52 The effectiveness of compliance functions is assessed as medium.

Effectiveness of Suspicious Activity Monitoring and Reporting

17.53 In the years 2016 to 2018 most SARs were made by firms that had more than 5 employees.

17.54 The JFCU advised that whilst the quality of most of the SARs they receive from estate agents is adequate, the sector would benefit from further training in this respect.

17.55 The effectiveness of suspicious activity monitoring and reporting is assessed as medium high.

SECTION 18

Casino Sector

Key Findings:

There are only two online casinos operating from Jersey; there are no terrestrial casinos. An online casino has to register with both the JFSC and the Jersey Gambling Commission. This dual registration includes two independent considerations of fitness and propriety of online casino operators.

The assessment of ML vulnerability for the online casino sector is medium low.

18.1 Online casinos are the focus of this section; although terrestrial bookmakers are the largest gambling sector in Jersey, they are not subject to FATF requirements. There are no terrestrial casinos in the island.

18.2 To operate a casino a person must register with the JFSC as required by the provisions of the SBJL. Registration is at Level 1. The JFSC supervises casinos for money laundering and the financing of terrorism only and does not carry out conduct or prudential supervision of this sector. All gambling in Jersey, including casinos, is supervised for conduct by the JGC.

18.3 The JFSC conducted a data collection exercise in respect of the years 2017 and 2018 for online casinos. However, due to the very small number of registered casinos, it is not possible to publish all the results of the data collection due to commercial sensitivities. This module included consideration of some 2019 data given the impact of additional licenses in the sector.

18.4 The gambling sector accounts for a relatively small portion of the Island's economy. Unlike the finance sector, its value to the economy is not measured. The Regulatory Returns for 2017 revealed total turnover figures of approximately GBP 23m for retail bookmaking; the consolidated figures for all remote licensees (combined with the smaller scale commercial gambling (Thrift Clubs, Crown and Anchor etc.)) as well as Charitable Registrations and Permits provide a turnover figure of approximately GBP 100 - 150m[137].

Threats in the Casino sector

18.5 There is no data available in relation to investigations, prosecutions or convictions involving the Casinos sector. The estimation of ML activities that occur in the sector but are not, or cannot be, detected, is deemed to be low and the size of the sector and/or its share in the economy is also deemed to be low. There are no physical casinos in the island and the risk rating reflects that.

[137] The churn factor needs to be applied when considering gambling business turnover, for example GBP 1 could win GBP 10 and this win then reapplied to a betting or gaming product. Thus, if the GBP 10 win was never cashed out it isn't physically realised and therefore becomes a 'credit' of play (especially in the case of machine play (virtual and terrestrial)). The Isle of Man Gambling Supervision Commission estimate GBP 1 is recycled somewhere in the region of 9 times in gambling games.

Vulnerabilities in the online casino sector

18.6 The assessment of ML vulnerability for the online casino sector is medium low.

Inherent vulnerabilities

Total size/volume

18.7 Compared to other business sectors in Jersey the online gambling industry is very small, only six operators are licensed in the Island and only two falling under the requirement to register with the JFSC under the SBJL.

18.8 Given the small size of the sector and its economic value to the Island, the rating must necessarily be considered to be low.

Client base profile

18.9 The data collected by the JFSC shows that the clients of online casinos are all individuals, and the overwhelming majority are not resident in Jersey. Online casino operators do not accept businesses as customers.

18.10 In general, the majority of stakes gambled are low and gamblers are considered to be recreational. The NRA working team members reported that professional gambling is not a feature of the online casino sector. There are a small number of VIP/high rolling accounts, these accounts show a high level of churn in the region of thousands of pounds.

18.11 The casino operators have reported that 99% of their clients have been risk rated as low. The NRA working team regard this as reasonable given the low value of the average bet and deposit by clients.

18.12 Not all operators accept PEPs as customers. Some may accept PEPs but will only do so from “low risk” jurisdictions. The data shows that as at 31 December 2018, there was only 1 PEP who was a client of an online casino.

18.13 It is not usual business practice for the online sector to register customers from countries and territories that are not compliant with FATF recommendations. Where a customer is accepted from other countries considered partially FATF compliant, a Jersey licensee must take this higher risk into account. Licensees must not accept business from countries that ban online gaming, such as the USA.

18.14 The inherent vulnerability of a client base comprised of recreational gamblers is considered low.

Use of agents

18.15 Online casino operators do not use agents in the financial services meaning of the word. Games are usually supplied by a third party (slots and casino content), but the operating platform and player interaction all take place with the operator.

18.16 The use of agents by online casinos does not exist.

Level of cash activity

18.17 Jersey remote gambling operators including online casinos do not accept cash.

18.18 The use of cash by online casinos does not exist.

International transactions

18.19 Almost all clients are resident outside of Jersey, thus it follows that funds gambled are received from different locations around the world. Due to commercial sensitivity, an analysis of countries of residence of online casino customers has not been included in this report.

18.20 The frequency of international transactions is assessed as high.

Other vulnerable factors of the profession

Anonymous use of online casinos

18.21 The anonymous use of the services of an online casino is not available under the AML framework as the identity of the client must always be found out. There is no anonymous play as all customers are required to submit personal details and CDD to verify who they are and their age.

Difficulty in tracing transaction records

18.22 Records relating to transactions are considered to be easy to trace. Systems are sophisticated, computerised and often automated. Access to records and generation of reports is a simple process.

Existence of ML typologies

18.23 Typologies relating to the online casino sector are considered to exist. Jersey has limited case studies available. However, typologies are readily available from comparable jurisdictions (UK, Isle of Man) and these are published in the public domain.

Use in fraud or tax evasion schemes

18.24 The possibility of using online casinos in fraud or tax evasion schemes is considered to exist but is limited. The industry could potentially receive money that is the proceeds of crime, however as the NRA working team discussed, with monitoring systems and checks in place the inherent vulnerability is regarded as low and considered an unlikely option for a criminal to undertake – particularly for a transaction involving large amounts of money already in the banking system. It is considered that the online gambling sector is more susceptible to recreational spending by criminals than for fraudulent activity.

Non face to face use of the services

18.25 Non face to face initiation of business relationships is available and prominent. By dint of being online, all businesses are by definition non-face to face, however

there are robust controls in place to ensure operators undertake extensive CDD which mitigates this vulnerability.

18.26 In addition, the NRA working team has identified the following specific vulnerability that should be considered:

Collusion between players – particularly online and more specifically poker (online)

18.27 None of the remote gambling operators in Jersey permit customers to directly transact with other customers; however, the inclusion of this vulnerability reprises the vulnerability of the operator to player collusion. The NRA working team members reported that while collusion in the sense of one player fronting for a syndicate occurs from time to time, the level of monitoring that takes place by operators should identify such instances.

18.28 The vulnerability to collusion between players is assessed as medium.

Control vulnerabilities

Table 18.1

Control Vulnerabilities Variables	Assessment Rating of the Casino	Casino Score
1. Comprehensiveness of AML Legal Framework	Medium High	0.6
2. Effectiveness of Supervision Procedures and Practices	Medium High	0.6
3.Availability and Enforcement of Administrative Sanctions	Medium Low	0.4
4. Availability and Enforcement of Criminal Sanctions	Medium Low	0.4
5. Availability and Effectiveness of Entry Controls	Very High	0.8
6. Integrity of Staff in Casino Sector Firms	Medium	0.5
7. AML Knowledge of Casino Sector Firms' Staff	Medium	0.5
8. Effectiveness of Compliance Systems	Medium	0.5
9. Effectiveness of Suspicious Activity Monitoring and Reporting	Medium High	0.6

Comprehensiveness of AML legal framework

18.29 The AML legal framework that applies to online casinos is fundamentally the same as that applied to all other relevant persons – one legislative regime with very few variances by industry sector.

18.30 The NRA working team were satisfied that the legal framework was sufficiently comprehensive. However, it was noted that the JFSC has not issued any sector specific guidance for online casinos, and this may represent a vulnerability as operators have advised that they would welcome some tailored guidance in this area.

18.31 The comprehensiveness of the AML/CFT framework is assessed as medium high.

Effectiveness of supervision/oversight activities

18.32 The JFSC is clearly identified in the SBJL as the AML/CFT supervisory body for casinos. The first online casino was not registered until the end of 2015.

However, during 2019 both casinos were included in a thematic examination focusing on the role of the MLRO.

18.33 Following a restructure in the Supervision Division of the JFSC in 2018, casinos have been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

18.34 The JFSC continues to develop its risk based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected.

18.35 Whilst there is a limited level of on-site activity recorded for this sector, during 2019 both casinos were included in a thematic examination focusing on the role of the MLRO.

18.36 Some additional comfort is taken from the conduct supervision undertaken by the JGC. There is a memorandum of understanding in place between the JFSC and the JGC.

18.37 However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

18.38 The effectiveness of supervision/oversight activities is assessed as medium high, on the basis that there is scope for the JGC and JFSC to cooperate more closely.

Availability and enforcement of administrative and criminal sanctions

18.39 The JFSC is unable to apply civil financial penalties to casinos, or any other DNFBPs, as the regime does not extend to those sectors. There have been no administrative sanctions applied to casinos by the JFSC for AML purposes, although it should be remembered that there are only two operators and the first casino was only registered by the JFSC at the end of 2015. There have been no criminal prosecutions of casinos for money laundering offences. The same points as in paragraph 19.36 apply here

18.40 The availability and enforcement of administrative and criminal sanctions is assessed as medium low.

Availability and effectiveness of entry controls

18.41 The vulnerability of gambling businesses to criminal control is generally considered low when weighed against entry requirements, however, cases do exist where criminal infiltration has occurred. For example, through the use of complex company structures to obfuscate UBOs, the Calabrian Mafia

organisation received a Maltese gambling licence.

18.42 In order to operate an online casino, a business requires a licence from the JGC and must be registered with the JFSC, one is effectively useless without the other. JGC entry controls are strong and whilst the JFSC controls are somewhat limited (specifically, the fit and proper test) a JFSC registration alone is not sufficient for a business to operate.

18.43 The availability and effectiveness of entry controls is assessed as very high.

Integrity and AML knowledge of entity staff

18.44 Staff supplied by TCSPs to act for casino businesses as Principal Persons (e.g. as a director) or Key Persons (e.g. MLRO) (as defined by the FSJL) must apply for and receive a 'no objection' from the JFSC before they can take up their appointment. The JFSC will consider a person's integrity, competence and financial standing. TCSP staff are also vetted by the JGC (Personal Gambling Licences), they may also be vetted by the UK Gambling Commission for holding Personal Management Licences if the entity transacts with the UK market. There are a number of checks carried out by the JGC on UBOs, directors and key personnel both on application and during the lifetime of a licence or permit – these include an Enhanced Disclosure and Barring Service check as well as annual Worldcheck searches. Operators carry out their own checks on all staff before they are employed. There have been no reported cases of collusion in the online sector in Jersey to date.

18.45 The industry representatives in the NRA working team advised that operators had in-house AML Compliance training programs for staff at all levels. Industry corporate service providers also provide bespoke, cross jurisdictional training to operators, as well as compliance reviews of systems and processes. AML training is provided at least annually, but generally more often. The JGC will review how often training is carried out, but do not always look at the training material itself. Jersey's online sector is a relatively young industry and AML, along with concerns regarding responsible gambling and problem gambling issues are at the forefront of compliance in the sector, the industries own processes therefore take this into account.

18.46 The integrity and AML knowledge of casino staff has been corroborated by the JFSC to a limited extent by way of the inclusion of the casinos in a thematic examination on the role of the MLRO. Thus the integrity and AML knowledge of entity staff is assessed as medium.

Effectiveness of compliance functions (entity)

18.47 The supervision work carried on by the JGC provides some evidence as to the effectiveness of the compliance functions in this sector, and there is some limited evidence available from the JFSC - which itself represents a vulnerability. However, it is worth noting, especially in relation to this section, that the compliance officers of both online casinos were fully participatory in the NRA exercise.

18.48 Both operators on the NRA working team stressed they have a well-resourced and assigned compliance function or team. It is to be noted that oversight is supplied by a Jersey registered TCSP for one operator and the other online

casino operation directly employs two former JFSC staff members.

18.49 The compliance function generally works independently of the operations team and dedicated processes for this function are in place. However, given the industry in Jersey is relatively young, organisations are small and, in some cases, this means that one individual may wear more than one "hat" as far as the compliance function is concerned. This may present a vulnerability.

18.50 AML/CFT falls under the compliance function for all operators and no Jersey operator has had to take disciplinary action against staff for a breach of their compliance rules apart from one recent verbal warning. Remote operators' systems are automated, with numerous controls, logging and monitoring of activity. However, technical systems are vulnerable to cyber-attacks and several have been reported by the industry – principally DDOS (Distributed Denial of Service) attacks. The industry works to ensure that systems are as secure as possible – but the threat always remains[138].

18.51 Both operators stated they are licensed in other jurisdictions, and thus are also subject to inspection by other gambling regulators.

18.52 The effectiveness of compliance functions is assessed as medium, on the basis that there has been a limited amount of independent corroboration of effectiveness by the JFSC.

Effectiveness of Suspicious Activity Monitoring and Reporting

18.53 The JFCU have not been able to provide the NRA working team with any statistics regarding how many SARs have been received from casinos, or indeed the gambling sector generally. This is because the standard SAR form does not include a category of casino or gambling operator in its sector analysis section. This represents a vulnerability as it impedes the ability of the JFCU to monitor and report on the effectiveness of SAR reporting from this sector. However, feedback from the JFCU to the NRA working team indicates that SARs made by the casinos are of a high quality.

18.54 The effectiveness of suspicious activity monitoring and reporting is assessed as medium high.

[138] These are ostensibly blackmail/extortion attempts made to realise the payment of a ransom to secure continuation of service.

SECTION 19

Insurance Sector

Overview of the insurance sector

19.1 Insurance businesses which meet the definition of a financial institution, as provided by the FATF, represent a very small percentage of the financial services business carried on in or from within Jersey. Five Jersey companies provide insurance services, of which only one provides long term insurance and their services are restricted to their group companies - they do not offer insurance products to the public.

19.2 The long-term insurance requirements of the local population are serviced by overseas companies.

19.3 Long term insurance covers both life insurance and insurance products with an investment element.

Overview of the insurance sector regulatory framework

19.4 Those persons who wish to carry on insurance business (long term[139] or general[140]) in or from within Jersey must be granted a permit by the JFSC as required by the Insurance Business (Jersey) Law 1996 (IB(J)L).

19.5 An insurance company must apply for either a Category A or Category B permit.

19.6 The JFSC regulates both Category A and Category B permit holders with respect to conduct of business and prudential matters, and in line with the FATF definition of financial institutions, those permit holders carrying on long term insurance business[141] are also supervised for compliance with the Jersey AML/CFT regulatory framework.

19.7 The JFSC also regulates persons carrying on general insurance mediation business (GIMB), as defined in Article 2(7) of the FS(J)L. However, regulation is only in relation to conduct of business and prudential matters. GIMB is not a financial services business by virtue of paragraph 4(b) of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999. Any person only carrying on GIMB is therefore not within the scope of the NRA.

Category A Permit

19.8 A Category A permit is issued to persons that meet the following conditions:

- the applicant is authorised by, or under, the law of a jurisdiction outside Jersey to carry on business meeting the IB(J)L definition of insurance business in that jurisdiction;

[139] As set out in Part 1 of Schedule 1 to the IB(J)L
[140] As set out in Part 2 of Schedule 1 to the IB(J)L.
[141] The FATF financial institutions definition includes the activity of: Underwriting and placement of life insurance and other investment related insurance

- such business would be lawfully carried on if it were carried on in that jurisdiction; and
- the applicant has provided the JFSC with confirmation, from the relevant supervisory authority, which satisfies it that the insurance business carried on in or from within Jersey is subject to the authority's supervision.

19.9 The JFSC places heavy reliance on the third condition which is discussed further in this section.

Category B Permit

19.10 A Category B permit is issued to applicants seeking to carry on insurance business that do not fulfil the above conditions.

Classes of long-term insurance

19.11 There are seven classes of long-term insurance[142] the following table highlights how many persons have been registered for each type of activity – note a person may hold a permit for more than one class of business.

Table 19.1

Class	Nature of business	Number of registered persons
I	Life and annuity	53
II	Marriage or civil partnership and birth	21
III	Linked long term	53
IV	Permanent health	42
V	Tontines	1
VI	Capital redemption	29
VII	Pension fund management	25

Threats in the insurance sector

19.12 From the data collected there s little evidence of ML investigation, prosecution, convictions and/or sanctions involving the sector

19.13 The assessment of ML threat for this sector is: medium low.

Vulnerabilities in the insurance sector

19.14 The assessment of ML vulnerability for this sector is: medium.

19.15 There is a significant reliance on the statement received, on registration, from the overseas supervisory authority that the insurance business carried on in or from within Jersey is subject to the overseas authority's supervision. This statement

[142] Further details of types of ac2vi2es can be found in Schedule 1 to the Insurance business (Jersey) Law 1996.

provides a level of assurance that the Jersey business of the insurer is subject to regulation and supervision in its home jurisdiction. When assessing a permit application, the JFSC considers the home jurisdiction and its AML regime for insurer, before granting a permit.

19.16 The JFSC does not collect data from the insurance sector on a systematic basis. Consequently, there is very little to no data available to inform a decision regarding the level of vulnerability in the insurance sector. This lack of data has led to the medium rating.

Inherent vulnerabilities

19.17 The Category B permit holder is a captive insurer therefore all their clients will be either other companies within the same accounting group or employees of the group companies. Consequently, the Category B permit holder is not considered in this section in any great detail.

19.18 Given that the vast majority of insurance companies are situated in neighbouring jurisdictions with clear links to Jersey (UK, Ireland and the Isle of Man), the rationale for their presence in the island is justifiable and understood.

19.19 Previous attempts to understand the volume/value of Jersey-based business undertaken by Category A permit holders through data collection has not produced any useful information. Consequently, no data is available regarding the total size/volume of Jersey long term insurance business.

Client base profile

19.20 As already reported, no systematic data has been collected for Category A permit holders therefore the makeup of the client base profile is unknown.

Use of agents

19.21 Only one Category A permit holder has a real presence in Jersey which is managed through a sister company.

19.22 Generally, the long-term products of the Category A permit holders are either:

- sold through local investment businesses who are themselves regulated and supervised by the JFSC for AML/CFT; or
- purchased directly through internet channels.

Level of cash activity

19.23 Cash is not used in this sector.

19.24 Despite the majority of customers of Category A permit holders understood to be Jersey residents, all payments to, and receipts from, Category A permit holders will be international in nature as no Category A permit holder has a physical presence in Jersey. In some cases, payments will be made through investment businesses regulated by the JFSC, who act as agents for the

Category A permit holders, and AML/CFT controls will be applied by those entities. However, some investment businesses are not able to hold client money therefore payments will be made directly to the overseas product providers.

19.25 There is no data available on the volume and value of payments made in relation to long term insurance products.

Other vulnerable factors

Anonymous use of insurance services

19.26 No such cases have been identified.

Difficulty in tracing transaction records

19.27 Expected to be easy to trace but this has never been tested.

Existence of ML typologies

19.28 None.

Use in fraud or tax evasion schemes

19.29 None known in Jersey.

Non face to face use of the products or services

19.30 It is understood that the Category A permit holders apply the CDD requirements of their home regulator and in the majority of cases that regime should reflect the requirements of the European Money Laundering Directives as very few Category A permit holders have a home regulator outside of the EU.

19.31 The actual level of non-face to face business is unknown. However, any business conducted through an investment business is highly likely to involve a face to face meeting between the insurer's agent and the customer as the investment business data highlights the following:

- IFAs' customers are individuals and because of suitability requirements contained in the IB Code the IFAs meet the vast majority of their customers, therefore it is rare that IFAs don't meet their customers face to face.
- According to statistics reported in the JFSC 2017 Data Collection Exercise 8,712 of the Wealth Managers customers are recorded as not being met or having one or more of the customer's beneficial owners and controllers that have not been met. This represents 12% of the Wealth Managers Customers/ Beneficial Owners/Controllers.

Control vulnerabilities

Comprehensiveness of AML legal framework

19.32 The AML legal framework applicable to Category A and Category B permit holders carrying on long term insurance is comprehensive with a few persons being exempted.

Effectiveness of supervision/oversight activities

19.33 The JFSC is the AML/CFT supervisory body for persons carrying on regulated insurance businesses.

19.34 All insurance business subject to AML/CFT supervision are supervised on a pooled basis on the principle that they pose the lowest level of impact risk to the JFSC's Guiding Principles[143]. Pooled supervision means that JFSC engagement with those firms is primarily through outreach initiatives and thematic on-site examinations.

19.35 As most Category A permit holders do not have a physical presence in Jersey, on-site examinations are not undertaken. The Insurance Code recognises that a Category A permit holder will be subject to the regulatory framework of their home jurisdiction and that of Jersey. However, should any significant differences emerge between the requirements of the home jurisdiction and that of Jersey, which would result in non-compliance with the Insurance Code; they must be brought to the attention of the JFSC for discussion and resolution.

19.36 Insurance Business are legally required to ensure that they comply with the Insurance Code and other regulatory requirements, including AML/CFT with respect to long term insurance business. The Category B permit holder is required to submit an Annual Declaration with their audited financial statements.

19.37 Following a restructure in the Supervision Division of the JFSC in 2018, insurance businesses have in the main been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

19.38 Some larger businesses have been allocated to the relationship managed supervision teams where a proactive approach is applied.

19.39 The JFSC continues to develop its risk-based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected however such data has not to date been collected for insurance businesses. This is planned for future collections.

19.40 However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

Availability and enforcement of administrative and criminal sanctions

19.41 The JFSC has a range of administrative sanctions available to it via the SB(J) L. Criminal sanctions are available via the Money Laundering Order. There are

143 As set out in Article 7 of the Financial Services Commission (Jersey) Law 1998.

no examples of administrative or criminal sanctions being applied to insurance businesses for failing to apply AML/CFT requirements.

Availability and effectiveness of entry controls

19.42 As part of the registration process the applicant is required to demonstrate that they are regulated and supervised in their home jurisdiction and meet the minimum solvency requirements of that regime. The JFSC communicates with the foreign counterparts to verify information and acquires a confirmation from the home regulator that the Jersey business is covered by their regulation and supervision of the applicant. Principal persons of the Category B applicants must submit personal questionnaires to the JFSC, and the JFSC will consider the fit and proper status of such persons before deciding whether to confirm it has no objection to their appointment (or otherwise).

Integrity and AML knowledge of entity staff

19.43 Unknown

Effectiveness of compliance functions (entity)

19.44 Unknown

Effectiveness of Suspicious Activity Monitoring and Reporting

19.45 Unknown

SECTION 20

Other Financial Institutions

20.1 For the purposes of this section of the report, other financial institutions (OFIs)[144] comprise those activities set out in paragraph 7(1) of Part B, Schedule 2 to the POCJL that match the FATF definition of financial institution[145], although there are several additional categories in Schedule 2 that are not mentioned in the FATF methodology but which were included in the Jersey regulatory regime in order to match EU requirements[146]. These are businesses that provide services that are not otherwise regulated where they perform activities such as; providing guarantees, money broking, participating in securities issuance, trading in money markets, foreign exchange.

20.2 The JFSC supervises OFIs for money laundering and the financing of terrorism only, and does not carry out conduct or prudential supervision on this sector.

20.3 Those persons who wish to provide any of the OFI services in or from within Jersey must register with the JFSC. Those activities that are included in the FATF definition of financial institution require registration at Level 1, whilst the additional activities require registration at Level 2. Registration is not required:

- if the person is also carrying on a regulated business[147], in which case they are not required to make an application but must notify the JFSC that they are carrying on the activity[148]; or
- if the person conducting a Schedule 2 activity:

  (a) is provided with any trust company business service by a person registered to carry on trust company business or is provided with any fund services business by a person registered to carry on fund services business, and

  (b) has no established place of business in Jersey other than a place of business provided by a person who is registered under the FSJL to carry on either trust company or fund services business.

20.4 Other provisions of the SBJL continue to apply but there is no requirement to notify the JFSC the exemption is being relied upon, although the JFSC is able to collect such information under its routine supervisory powers in order to inform risk-based supervision.

144 This section of the report does not cover lending and financial leasing, money services business and issuing and administering means of payment, which are covered in the other parts of the report.
145 February 2013 FATF Methodology
146 Paragraph 7(1)(i), (j) and (m).
147 Regulated business includes businesses registered under the BBJL and FSJL.
148 Except for persons registered to conduct trust company business (see paragraph 25.10)

Vulnerabilities in the OFI sector (general)

Comprehensiveness of AML legal framework

20.5 The descriptions of each activity in set out in paragraph 7(1) of Part B, Schedule 2 to the POCJL have been described as difficult to interpret.

20.6 As a result of the lack of clarity, uncertainty does arise regarding whether a business's activity requires registration under the SBJL, with the result that there may be persons registered who need not be, and vice versa.

20.7 Both the lack of guidance for persons falling under definition of OFIs and the registration exemptions set out in legal acts represent a vulnerability. The comprehensiveness of the AML legal framework is assessed as medium.

Effectiveness of supervision/oversight activities

20.8 Following a restructure in the Supervision Division of the JFSC in 2018, OFI's have been allocated to the Pooled Supervision Unit. The unit supervises on a pooled basis taking into account risk indicators to drive activity. Thematic examinations and outreach form a key component of supervisory activities. Allocation is on the basis of the potential inherent risk to the JFSC's Guiding Principles with those allocated to the Pooled Supervision Unit on the basis that they pose the lowest level of risk to the Guiding Principles. This does not mean no risk with supervisory resource being applied where risks escalate.

The JFSC continues to develop its risk-based approach with the development and deployment of a risk model to drive supervisory activity where risks escalate outside tolerance. The risk model is populated from industry data collected.

No on-site examination activity was undertaken for entities within this sector over the reporting period

However, a vulnerability in respect to data exists during the relevant period because of limited capacity of a supervisor to analyse this data and observe trends (no retrospective analysis/comparison possible). In 2018 the JFSC commenced collecting data systematically from supervised entities in support of its risk model development. There remains a vulnerability as the analysis of such data and development of the risk model continues to evolve. Such data is now being used to drive supervisory activity.

20.9 The effectiveness of supervision/oversight activities is assessed as low.

Availability and enforcement of administrative and criminal sanctions

20.10 The JFSC does not regularly 'police the perimeter' of regulation therefore there is a vulnerability that there may be unauthorised Schedule 2 activity being conducted in Jersey.

20.11 The availability and enforcement of administrative and criminal sanctions is assessed as low.

Availability and effectiveness of entry controls

20.12 At Level 2, the regulatory entry controls are very limited and the JFSC has a limited ability to refuse an application for registration. Level 2 registration (unlike level 1) does not include a criminality test on the principal and key persons of a business. The availability and effectiveness of entry controls is assessed as low.

Vulnerabilities in the OFI sector (activity-specific)

20.13 The following paragraphs cover those activities for which most persons are registered. As well as reviewing the data held by the JFSC, further information was obtained from discussions with some registered persons.

Participation in securities issues (Listing agents)

Overview

20.14 The activity of being a listing agent falls within paragraph 7(1)(h) of Part B, Schedule 2 to the POCJL, "the business of providing the following services to third parties: participation in securities issues (and the provision of services related to such issues)".

20.15 Data obtained from the International Stock Exchange (TISE) (formerly the Channel Islands Stock Exchange) website shows that 42% of its listing agents are Jersey-based, but that 76% of securities have a Jersey-based listing agent.

Activities

20.16 A listing agent is required to be engaged by an issuer that wishes to list on a stock exchange (for the purposes of this report, that exchange is assumed to be TISE). Issuers may be funds (including REITs), SPVs and trading companies (including listed companies). Most issuers are listing debt securities rather than equity. Issuers may wish to be listed for a variety of reasons; for example, some investors are only permitted to invest in listed securities (e.g. pension funds), and interest on debt securities can be paid without deduction of UK tax.

20.17 The listing agent must remain engaged during the period of the listing; thus the nature of the engagement is a business relationship rather than a one-off transaction. The listing agent will assist in compiling the listing documentation that is required to be submitted to the stock exchange. Interviews with a sample of listing agents showed that the CDD undertaken on the client issuer is the same as for any other client of the law firm/regulated business.

Vulnerability to ML

20.18 In addition to the general vulnerabilities listed earlier in this section, the following are relevant to listing agents:

Availability and effectiveness of entry controls.

20.19 Listing agents are subject to a fit and proper test by TISE, as well as being registered by the JFSC (which includes a criminality test).

Client base profile

20.20 The client base does not include any individuals, just legal persons and legal arrangements. Issuers are likely to be funds, SPVs or trading companies.

20.21 Issuers are subject to several layers of due diligence and scrutiny: (i) TISE undertakes its own due diligence on issuers and has the ability to turn down a listing; (ii) Some issuers are also listed elsewhere, thus subject to scrutiny by more than one exchange; (iii) there are other service providers to the issuer who will also be undertaking their own due diligence, e.g. law firms, accountants, banks, who are generally well known firms.

20.22 Given that issuers undergo due diligence from the stock exchange before they are permitted to list their securities, this reduces the inherent vulnerability of the client base of listing agents.

Frequency of international transactions

20.23 As Jersey does not have a stock exchange, all transactions are international transactions.

Other vulnerability factors

20.24 TISE is a listing exchange only, therefore a listing on TISE does not provide liquidity. Thus opportunities for ML are limited.

Investing, administering or managing funds or money

Overview

20.25 There are 20 persons registered with the JFSC to carry on “the business of otherwise investing, administering or managing funds or money on behalf of third parties”.

Vulnerabilities

20.26 Some of the registered persons in this category will handle cash as part of their activities, for example debt collectors and property managers (where collecting rent). The extent of the cash handled is not known, but it is considered that the volume will be low and thus any related vulnerability will be low.

20.27 Given the low number of persons undertaking the above described activities, relatively small number of customers and low volume of cash activity, the overall ML vulnerability is assessed as low.

Summary

20.28 Overall the ML vulnerability from OFI activity is considered to be low.

High value dealers

Overview

20.29 A high value dealer is defined (POCJL) as a person who, by way of business, trades in goods and receives in respect of any transaction (whether executed in a single operation, or in several operations which appear to be linked) payment of at least EUR 15,000 in total.

20.30 Those persons who wish to provide services as a high value dealer in or from within Jersey must register with the JFSC. The JFSC supervises high value dealers for AML/CFT only. During the relevant time period, there were only 2 high value dealers registered with the JFSC.

20.31 No data was collected by the JFSC from these businesses as at 31 December 2017. However, both of the high value dealers have either been met or have received an on-site examination from the JFSC in 2019 and have confirmed that they have not received any payments in cash or virtual currency.

20.32 ML vulnerability is considered to be very low.

Annex A – Glossary

Term	Definition
Accountancy Services	includes any service provided under a contract for services which pertains to the recording, review, analysis, calculation or reporting of financial information
AG	Attorney General
AML/CFT	anti-money laundering / countering the financing of terrorism
AML/CFT Codes of Practice	Codes of Practice for regulated financial services businesses, issued in accordance with Article 22 of the Supervisory Bodies Law
AML/CFT Handbook	Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (Four AML/CFT Handbooks are published by the JFSC, containing both Codes of Practice (enforceable regulatory requirements) and guidance in relation to AML/CFT requirements)
audit services	audit services provided by way of business pursuant to any function under any enactment
auditor	anyone who is part of the engagement team (not necessarily only those employed by an audit firm)
BB(J) Law	Banking Business (Jersey) Law 1991
BEPS	OECD Base Erosion and Profit Shifting programme
CD	Crown Dependency
CDD	Customer due diligence
CHWL	Control of Housing and Work (Jersey) Law 2012
CIF(J) Law	Collective Investment Funds (Jersey) Law 1988
CoBO	Control of Borrowing (Jersey) Order 1958
CPD	Continuing Professional Development
Client / customer	A person
collective investment scheme	means any of the funds specified in Article 13(10) of the Money Laundering Order
Commission / JFSC	Jersey Financial Services Commission
Companies Law	Companies (Jersey) Law 1991
Customer / client	A person (can also be referred to as “client”)
DNFBP	Designated Non-Financial Business or Profession
designated relationship	a relationship established by a customer on behalf of one third party, including a relationship involving sub-accounts for each third party
Egmont Group	A united body of 164 Financial Intelligence Units
engagement team	comprises all persons who are directly involved in the acceptance and performance of a particular audit
equivalent business	has the meaning given in Article 5 of the Money Laundering Order

Term	Definition
ESW	Egmont Secure Web
EU	European Union
EUR	Euro
external Accountancy Services	Accountancy Services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide Accountancy Services to third parties
FATF	Financial Action Task Force
financial services business	has the meaning given in Article 36 of the Proceeds of Crime Law
financing of terrorism	conduct which is an offence under any provision of Articles 15 (use and possession etc. of property for purposes of terrorism) and 16 (dealing with terrorist property) of the Terrorism Law; or conduct outside Jersey, which, if occurring in Jersey, would be an offence under Articles 15 and 16
Foundations Law	Foundations (Jersey) Law 2009
FS(J) Law	Financial Services (Jersey) Law 1998
FSB	Fund Services Business
FSRB	FATF Style Regional Body
Gambling Law	Gambling (Jersey) Law 2012
GBP	Pound Sterling
his	the term "his" when used with reference to any individual should be understood to mean either "his or her"
HVR	High Value Resident
IAIS	International Association of Insurance Supervisors
IB(J) Law	Insurance Business (Jersey) Law 1996
ICAEW	Institute of Chartered Accountants in England and Wales
identification measures	those measures described in Article 3(2) of the Money Laundering Order
ILOR	International Letter of Request
IMF	International Monetary Fund
insolvency services	services provided by a person if, by way of business, that person accepts appointment as: an insolvency manager appointed under Part 5 of the Limited Liability Partnership (Jersey) Law 1997 as that Law has effect in its application to insolvent limited liability partnerships pursuant to the Limited Liability Partnerships (Insolvency Partnerships) (Jersey) Regulations 1998; or as agent of an official functionary appointed in the case of a remise de biens, cession, or désastre
IOSCO	International Organization of Securities Commissions
JFCSG	Jersey Financial Crime Strategy Group
JFCU	Joint Financial Crimes Unit Officers of the JFCU are the designated police and customs officers for the purposes of the Money Laundering Order
JFSC	Jersey Financial Services Commission
JGC	Jersey Gambling Commission

Term	Definition
JPF /Jersey Private Fund	A Jersey Private Fund is a private investment fund with no more than 50 eligible investors involving the pooling of capital raised for the fund and which operates on the principle of risk spreading. A JPF is more fully defined, authorised and operated in accordance with the JPF Guide and has been issued with a relevant consent under COBO
JPF Guide	"Jersey Private Fund Guide" published by the JFSC on 11 April 2017 and updated on 31 August 2018
LEA	Law Enforcement Agencies
Legacy Private Funds	Legacy Private Funds Means those Private Funds that are a. CoBO only Funds (pre-April 2017); b. Private Placement Funds (pre-April 2017); and c. Very Private Funds (pre-April 2017)
Legal Sector AML/CFT Codes of Practice	Codes of Practice for the Legal Sector, issued in accordance with Article 22 of the Supervisory Bodies Law
Licence	a generic term to cover: a registration granted under the BB(J) Law; a permit granted pursuant to the CIF(J) Law; a certificate issued pursuant to the CIF(J) Law; a registration granted under the FS(J) Law; and a permit granted pursuant to the IB(J) Law
LLP	Limited liability partnership
LPP	legal professional privilege
LSJ	Law Society of Jersey
Managed Entity (ME)	means a registered person that relies upon the services of a registered person with a Class ZK registration (manager of a managed entity) to satisfy any parts of its regulatory obligations
Manager of a Managed Entity (MoME)	means a registered person licensed under the Financial Services (Jersey) Law 1998 holding the Fund Services Business class ZK which is Manager of a Managed Entity.
MER	Moneyval mutual evaluation reports
MLA	Mutual Legal Assistance
MLCO	the Money Laundering Compliance Officer
MLRO	the Money Laundering Reporting Officer
MoME	Manager of Managed Entities

Term	Definition
money laundering	conduct that is an offence under any provision of Articles 30 (dealing with criminal property) and 31 (concealment etc of criminal property) of the Proceeds of Crime Law; • conduct that is an offence under Articles 34A and 34D of the Proceeds of Crime Law; • conduct that is an offence under Article 7 (making funds available to a terrorist), Article 8 (failure to freeze terrorist funds) and Article 10 (failing to make a disclosure to the Chief Minister's Department) of the UN Order; • conduct that is an offence under Articles 13 to 17 (failing to freeze terrorist funds and making things available to a terrorist) and 19 (licencing offences) of the Terrorist Asset-Freezing Law; or • conduct outside Jersey, which, if occurring in Jersey, would be an offence under any of the above.
Money Laundering Order / MLO	Money Laundering (Jersey) Order 2008
MoU	Memorandum of Understanding
MSB	Money Service Business
MSB Exemptions Order	Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007
NAEA Property Mark	National Association of Estate Agents
NDF	Non-Domiciled Fund (Non-Jersey Public Fund)
NRA	National Risk Assessment
obliged person	has the meaning given in Article 16 of the Money Laundering Order
payee	person who is the intended final recipient of the wire transfer
payer	person who gives the instruction for the wire transfer to be made
PCC	a protected cell company
PEP	politically exposed person – which has the meaning given in Article 15(6) of the Money Laundering Order
PIRS	Professional Investor Regulated Scheme Exemption
policies and procedures	the way in which a business' systems and controls are implemented into the day-to-day operation of the business
Proceeds of Crime Law / POCJL / POCL	Proceeds of Crime (Jersey) Law 1999
Public Fund	A Public Fund is a Financial Services Business as specified in Schedule 2, Part A, paragraph 3 of the Proceeds of Crime (Jersey) Law 1999 (POC) and is subject to the requirements of the Money Laundering (Jersey) Order 2008 (MLO).
RAL	Revenue Administration (Jersey) Law 2019
regulated person	has the meaning provided given in Article 1 of the Supervisory Bodies Law
relevant employee	an employee whose duty relates to the provision of a financial services business
relevant period	The period during which most of the data relied on in this document was collected i.e. 1 January 2017 to 31 December 2018

Term	Definition
relevant person	a person carrying on a financial services business in or from within Jersey, and a Jersey body corporate or other legal person registered in Jersey carrying on a financial services business anywhere in the world
relevant person carrying on regulated business	relevant person that is regulated by the Commission under the regulatory laws and that holds a licence
RFA	Request for Assistance
SAR	suspicious activity report
SBJL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
SDD	Simplified due diligence
Schedule 2 business	An activity described in Schedule 2 to the Proceeds of Crime Law
source of funds	activity which generates funds for a customer/client
source of wealth	activities which have generated the total net worth of a person
specified Schedule 2 business	has the meaning given in Article 1 of the Supervisory Bodies Law
Supervisory Bodies Law / SBJL / SBL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
systems and controls	a relevant person's general framework to combat money laundering and the financing of terrorism
tax advisors	those in business offering tax services
TCSP	Trust and Corporate Service Provider
Terrorism Law / TL	Terrorism (Jersey) Law 2002
TISE	The International Stock Exchange (previously the Channel Islands Stock Exchange)
UBO	Ultimate Beneficial Owner
UFO	Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008
UN	United Nations
UN Order	Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002
unit	unit has the same meaning as in Article 1(1) of the Collective Investment Funds (Jersey) Law 1988
Unregulated Fund	A Fund that has filed a notice in accordance with paragraph 3 of either Schedule 1 or Schedule 2 of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, as amended.
USD	US Dollar

Designed and produced by the
Government of Jersey Communications Team

Gouvèrnément
d'JÈRRI