

Private Trust Companies, Single Family Offices and Governance Entities – Registering for AML supervision under Jersey's proceeds of crime legislation

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The Proceeds of Crime (Jersey) Law 1999 (the **POC Law**), the Proceeds of Crime Supervisory Bodies (Jersey) Law 2008 (the **Supervisory Bodies Law**) and the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**) (the **AML Laws**) in connection with the supervision of financial service businesses in Jersey for anti-money laundering, countering the financing of terrorism and countering proliferation financing (**AML/CFT/CPF**) purposes impose a number of AML obligations on a broad range of activities which are conducted within Jersey including, notably, activities related to the private wealth sector.

The general requirements are discussed in our briefing dated 8 December 2023: "[Registering for AML supervision under Jersey's proceeds of crime legislation](#)".

The purpose of this note is to highlight how the AML Laws impact private trust companies (**PTCs**), single family offices (**SFOs**) and Jersey corporate entities acting as governance entities, with powers to appoint and remove trustees, such as protectors, enforcers and other power holders (**Governance Entities**).

Background

The principal law governing Jersey's regime for AML/CFT/CPF is the POC Law. Under the POC Law, it is an offence for a 'financial services business' to fail to implement procedures for the prevention and detection of money laundering, terrorist financing or proliferation financing. Schedule 2 to the POC Law (**Schedule 2**) specifies certain activities and operations, which when conducted as a business, constitute 'financial services business' (**Schedule 2 Business**). Under

the Money Laundering Order, any person conducting any Schedule 2 Business in or from within Jersey, and any Jersey-registered legal entity carrying out such activity anywhere in the world, is required to register with the Jersey Financial Services Commission (JFSC) and put in place specified AML/CFT/CPF measures.

Entities should be mindful of the potentially severe penalties that apply under AML/CFT/CPF legislation, both to the entity itself and to its senior management. In particular, carrying on unauthorised Schedule 2 Business is an offence punishable by imprisonment for up to seven years and a fine. In this context, it should be noted that activities and operations conducted by legal arrangements such as trusts, are carried on by their governing body acting in that capacity. Accordingly, the governing body of a legal arrangement (such as a trustee) is responsible for compliance with AML/CFT/CPF obligations in relation to the activities or operations it is conducting in relation to the legal arrangement.

Separation of conduct of business and prudential regulation from AML/CFT/CPF supervision

It is important to remember that AML/CFT/CPF supervision is separate to the conduct of business and prudential regulation. For example, activities based on exemptions to the Financial Services (Jersey) Law 1998 (the **Financial Services Law**), such as the exemptions for private trust companies (PTCs) (in respect of which, see below) and Governance Entities such as private protector companies (PPCs) remain available even if such activities fall within Schedule 2 and trigger a requirement to register with the JFSC for AML/CFT/CPF supervision.

PTCs have been a particularly attractive structuring option for many private wealth structures in Jersey as they provide the benefits of a trust structure from a succession planning perspective whilst allowing for a significant degree of control to be retained over the structure itself at the trustee level. For families that wish to have oversight of the structure, PTCs are often a particularly appealing option. Founders increasingly want more control and family participation. To this end experienced family members and trusted advisers with experience and knowledge of the family and the family business or other assets being transferred into trust can become board members of the PTC usually to sit alongside directors provided by the professional service provider. PTCs have since 2000 been exempt from the requirement to register under the Financial Services Law provided (i) the PTC entity is a company (ii) it provides trust company business services only in respect of a specific trust or trusts (iii) it does not solicit from or provide trust company services to the public; and (iv) the PTC entity is administered by a "registered person" who is registered to carry out trust company business under the Financial Services Law (together the **PTC Exemption**). As stated above, the PTC Exemption is available to qualifying entities, even if they are required to register for AML/CFT/CPF supervision by the JFSC under the AML Laws.

Scope and JFSC Guidance

All persons carrying on a Schedule 2 Business in or from within Jersey are required to register with the JFSC, if they are within scope. The JFSC has issued guidance on the interpretation of 'in or from within Jersey' to assist non-Jersey entities to assess whether they are in scope. An entity is considered to be conducting business in or from within Jersey where:

- It is managed and controlled from Jersey, or
- It has a physical presence in Jersey (i.e. office space), or
- It has employees or agents operating in Jersey (operating in the sense that employees or agents are located in Jersey with some degree of permanence and undertaking their Schedule 2 activities from Jersey).

A non-Jersey individual who has a degree of permanence in Jersey (in the sense of having a fixed/service office from which they work while in Jersey, such office being taken in their own name for the purpose of their business activities), will be regarded as conducting business in or from within Jersey. Accordingly, non-Jersey resident individuals who act as directors of Jersey companies or as trustees of Jersey trusts, will not, in the majority of cases, be required to register with the JFSC in respect of their Schedule 2 activity.

The list set out in Schedule 2 of the POC Law is designed to mirror the requirements of the FATF recommendations. Schedule 2 Businesses specifically include "acting as or arranging for another person to act as, a trustee of an express trust". In addition, whilst this is limited to persons providing their services as a business, the guidance issued on interpretation by the JFSC under the powers granted in the POC Law indicates that any corporate entity providing trustee services is likely to be considered to be providing these services or carrying out these activities "as a business" notwithstanding that they may be providing these services only to a specific trust or trust (for example, to one family) and are not providing trust services to the public (see analysis below).

As a result, private trust companies (PTCs), single family offices and Governance Entities (including without limitation private protector companies) will likely now be considered to be carrying out a Schedule 2 Business for the purposes of the POC Law. Accordingly, such entities will need to register with the JFSC for AML/CFT/CPF supervision on an entity by entity basis.

Non-Professional Trustees, being individuals who act as trustee in an honorary capacity and receive no fees for so acting, are not required to register as Schedule 2 businesses but are required to comply with certain limited provisions of the Money Laundering Order.

In every case the JFSC's guidance should be considered in view of the relevant entity's relationships with those for whom, or on behalf of, it conducts the activity in question and legal advice should be sought, where appropriate.

The requirements of the Money Laundering Order which apply to Schedule 2 Businesses include the appointment of a money laundering reporting officer (**MLRO**) and a money laundering compliance officer (**MLCO**), adoption of customer and business risk assessments and policies and procedures and to carry out their own due diligence in accordance with the provisions of the Money Laundering Order and the AML/CFT/CPF Handbook issued by the JFSC.

The Money Laundering Order provides for the ability to appoint an anti-money laundering service provider (**AMLSP**) to fulfil the obligations of a relevant person to appoint an MLRO and an MLCO and to comply with all other obligations of the relevant person under the AML Laws. In brief, this permits certain eligible entities to appoint an AMLSP to assist with complying with their obligations under the AML Laws. The criteria for those eligible to appoint an AMLSP is set out in a Notice issued by the JFSC pursuant to the Money Laundering Order. The requirements for appointment as AMLSPs is also confirmed in the Notice.

"By way of business" versus "conducted as a business"

One important point to note is that the language in the AML Laws follows certain terms used in the FATF Standards rather than terms used in existing prudential legislation, in particular, the Financial Services Law. For example, entities are required to register for AML/CFT/CPF supervision when they conduct Schedule 2 activities "as a business". Guidance from the JFSC suggests that the following may be indicators that a person is conducting as a business:

- they hold out or publicly offer to conduct the activity for other persons;
- they conduct the activity for commercial purposes with the intention of earning a profit or receiving compensation, including non-financial benefits/benefits in kind;
- the level of financial compensation received is significant;
- they conduct more than one Schedule 2 activity;
- they conduct the Schedule 2 activity for more than one person; or
- they conduct the Schedule 2 activity with a view to making a profit, including where the intention is for the profit to come to someone else such as another group company.

The application of the term conducted "as a business" has wide scope and the guidelines issued by the JFSC indicate that most SFOs and Governance Entities are likely to be included within the scope of this term. Furthermore, the Guidance from the JFSC explicitly states that PTCs will act 'as a business'.

The effect of the difference between the terms conducted "as a business" and "by way of business" is that some entities which are not within the scope of the prudential regulation

pursuant to the Financial Services Law on the basis that they are not carried out "by way of business", may nevertheless be caught by the broader definition applied for the purposes of the AML Laws. As such, save for PTCs (as they are expressly deemed to act 'as a business') SFOs and Governance Entities which have historically relied upon the fact that they do not operate "by way of business" should ensure that they review whether their activities could be considered to be conducted "as a business" for the purposes of the AML Laws. In our experience to date many will be caught by the different test in the AML Laws and will be required to register.

Single family offices

Single family offices can come in all shapes and sizes with a range of different functions. As such the regulatory treatment for SFOs will vary significantly depending upon the scope of services provided by the relevant entity. Historically many SFOs that did carry out activities that fell within the scope of regulation may have been able to rely upon an analysis that they fell outside the requirement to be regulated under the Financial Services Law and to be supervised under the Supervisory Bodies Law on the basis that they have not been conducting their activities "by way of business". The use of the FATF terminology in the AML Laws in this respect is therefore of particular significance for SFOs who should ensure that they have carefully reviewed their regulatory position.

Where an SFO is satisfied that they are not conducting services "as a business" (and therefore do not need to rely on the PTC exemption) and do not, therefore, fall within the scope of the AML Laws they will need to ensure that they remain within this exemption. Particular care should be taken to ensure that (i) the services are not publicly offered, (ii) the services are not conducted for commercial purposes and no compensation is provided and (iii) the person providing the services is not conducting the activity for more than one person. SFOs should ensure that all arrangements (financial or otherwise) are carefully reviewed in this regard. As noted above, the list of factors which may indicate that an SFO is conducted "as a business" is very wide indeed and includes both financial compensation and non-financial compensation. In our experience, it is the JFSC's expectation that most SFOs are required to register.

Comment

Compliance with MONEYVAL and FATF recommendations is highly important for the trust industry in Jersey to demonstrate that Jersey remains compliant with the latest international standards in relation to AML, CFT and CPF.

As an early subject of MONEYVAL evaluation assessment Jersey is at the forefront of AML/CFT/CPF legislation and it is likely that other jurisdictions will follow suit in the near future following their own assessment. The alignment of Jersey's AML Laws with the FATF recommendations places Jersey ahead of other jurisdictions in this regard and provides

certainty for the use of structures based in Jersey going forwards.

The significant practical benefits offered by private trust companies (**PTCs**), single family offices and Governance Entities are likely to ensure that demand for these structures remains strong within Jersey. As a result, service providers in Jersey need to ensure that they are aware of the regulatory requirements and how these can impact client entities such as PTCs, SFOs and Governance Entities.

From a practical perspective, service providers who administer or provide services to PTCs, SFOs and Governance Entities must ensure that (where relevant) they have applied for registration with the JFSC under the Supervisory Bodies Law and have appointed an MLRO and MLCO and (if relevant) an anti-money laundering service provider in respect of their obligations under the AML Laws.

Ogier's private wealth and regulatory teams are on hand to offer detailed support to private trust companies, single family offices and governance entities. Ogier's regulatory consulting team is also well placed to support on corporate governance matters and policies and procedures for AMLSPs and client entities.

Please contact James Campbell, Josephine Howe, Tui Iti or Matthew Shaxson for further information or advice.

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Meet the Author



James Campbell

Partner

Jersey

E: james.campbell@ogier.com

T: [+44 1534 514230](tel:+441534514230)

Key Contacts



Emily Haithwaite

Group Partner, Ogier Legal L.P.

Jersey

E: emily.haithwaite@ogier.com

T: [+44 1534 514072](tel:+441534514072)



Josephine Howe

Partner

Jersey

E: josephine.howe@ogier.com

T: [+44 1534 514201](tel:+441534514201)



Matthew Shaxson

Group Partner, Ogier Legal L.P.

Jersey

E: matthew.shaxson@ogier.com

T: [+44 1534 514064](tel:+441534514064)



George Yates

Senior Associate

Jersey

E: george.yates@ogier.com

T: [+44 1534 514180](tel:+441534514180)

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