

# FinReg

MOURANT OZANNES

FINANCIAL SERVICES & REGULATORY

AUTUMN UPDATE 2016 - JERSEY

## WELCOME

Simon Gould  
Partner

T +44 1534 676 367

E [simon.gould@mourantozannes.com](mailto:simon.gould@mourantozannes.com)



Welcome to our FinReg Autumn Update. Whilst its very much business as usual in terms of local FinReg changes and developments, the notable event of the last quarter must be the collapse of the Providence fund in Guernsey and of IFA business, Lumiere, part of the Providence Global group, in Jersey. Other than the bare facts, the story behind this collapse is still somewhat unclear as the details unravel week by week, most recently with the arrest and remand in custody of former Managing Director of Lumiere, Chris Byrne. Clearly this will continue to be a very serious concern for investors, the regulators and the police in Jersey and Guernsey over coming months.

No doubt questions might be asked as to how this can happen in two such well-regulated jurisdictions, but one thing is certain, bearing in mind the Moneyval comments about regulatory enforcement action in Jersey and Guernsey at the start of the year, that this will have only strengthened further the resolve of the JFSC and GFSC to pursue enforcement action. The GFSC have imposed sanctions on regulated businesses and individuals this summer and no doubt there will be more to come in the Channel Islands.

On other more mundane issues, we are pleased to see the new Funds section of the AML Handbook being published for consultation. This will assist efficient administration in Jersey's funds industry and is discussed further in our spotlight topic below.

We are grateful once again to those of you who took the time to answer the questions raised in our Summer Update and have included some feedback on your responses in this Update, as well as some new questions for you to consider.

Please keep your answers coming!

*What's in this issue? Click the icons to explore ...*



QUICK  
FIRE  
UPDATES



SPOTLIGHT ON:  
THE PROPOSED  
NEW FUNDS SECTION  
OF THE AML/CFT  
HANDBOOK



UPCOMING  
EVENTS &  
SEMINARS



CONSULTATION  
SNAPSHOTS



INDUSTRY  
UPDATE  
TRACKER



**QUICK FIRE UPDATES**

**1. DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-**

**What's it about?**

On 1 November 2016 the States will debate a proposed re-enactment of Jersey's limited liability partnerships legislation. LLPs are not corporate bodies, but they are legal persons, distinct from their partners. In this way, they differ from limited partnerships and common law partnerships. The latest version of the Law is intended to make LLPs more user-friendly and a more attractive product for use by investors and businesses

**How does this affect you?**

To date, there have been very few Jersey LLPs established. Following these changes, more clients may wish to use LLP structures. Businesses will need to ensure they have appropriate take-on forms, mandates and template documents for use by LLPs.



<b>HAVE YOUR SAY:</b> Do you see opportunities for the use of LLPs in Jersey, alongside the existing LPs, ILPs and SLPs?	Yes	No	N/A for my business
--	-----	----	---------------------

**2. CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 2016**

**What's it about?**

This law resolves some long standing issues relating to *tutelles*, including removing the role of *électeurs*. *Tuteurs* must be appointed by the Court when movable property exceeding £25,000 or immovable property is owned or owed to a minor (unless such movable property is part of an estate or held on trust). The law details powers and duties of *tuteurs*, their rights to remuneration, when/how they can cease to hold office and that *tuteurs* can direct, delegate to or employ a person to take actions concerning the property.

**How does this affect you?**

Client due diligence in respect of a *tuteur* involves understanding *tutelles* and a *tuteur's* role and powers. This should be made significantly easier thanks to this new law.



<b>HAVE YOUR SAY:</b> Do you have any clients acting in their capacity as a <i>tuteur</i> ?	Yes	No	N/A for my business
---	-----	----	---------------------

**3. CONSULTATION NO.6 OF 2016: PROPOSED AMENDED OUTSOURCING POLICY**

**What's it about?**

The JFSC has recently consulted on changes to its Outsourcing Policy. The consultation period closed on 30 September 2016.

**How does this affect you?**

If the amended Outsourcing Policy was implemented in its current form, the immediate impact on existing outsourcing arrangements should be limited since the amended Outsourcing Policy is not proposed to apply retrospectively, although the details of exactly what this means in practice still need to be ironed out.

For new and revised outsourcing arrangements, the effect would be more significant since the amended Outsourcing Policy would capture certain non-regulated activities that are currently out of scope, amend certain core principles and set specific timeframes for applying for JFSC confirmation of no objection, as well as removing branch to branch outsourcing from scope. We await the feedback to the consultation paper.

<b>OUR SAY:</b> "Whilst this is an important topic for revision and proposes some positive changes for specific industry sectors, we think there are a number of significant details that still need to be addressed."	
--	--

CONTINUED...



CONTINUED...

**4. UPDATE TO AML LEGISLATION**

**What's it about?**

Six items of amending AML legislation came into force between 22 August and 26 September, which:

- Extend registration requirements to non-corporate persons with a registered office in Jersey, carrying on regulated business anywhere in the world;
- Create new regulatory regimes for accepting payment in and exchanging virtual currency;
- Create a new regulatory regime for trustees of express trusts who act other than by way of business;
- Make some tidying up changes to the Money Laundering Order.

**How does this affect you?**

You should obviously check your position under this new legislation if you accept payment in or exchange virtual currency. The new non-professional trustee regime should not affect your business but might affect individuals personally. Transitional periods apply for registration. Otherwise you should check whether non-corporate entities under your administration will need to be registered and make sure you are up-to-date with the 'tidying-up' changes to the MLO.



<b>HAVE YOUR SAY:</b> Do you already or do you plan to accept payment in or provide exchange of virtual currencies?	Yes	No	N/A for my business
---	-----	----	---------------------

**5. TYGRES INVESTMENTS AND GG INVESTMENTS V JERSEY HOME LOANS LIMITED AND OTHERS**

**What's it about?**

The lenders sought recovery of a loan. The debtors appealed the Royal Court's decision not to grant a stay of proceedings while a complaint to the Ombudsman was ongoing. This was refused as the Ombudsman did not have jurisdiction to consider the complaint against the private lenders, and it could not be found fair and reasonable to force JHL to renew or extend a mortgage where the borrower was not up to date with payments and was in breach of the loan conditions.

**How does this affect you?**

The Court's finding implied that there was nothing about JHL's lending terms or the circumstances generally which meant that it would not be fair and reasonable to refuse an extension to and proceed with recovery of the loan. Although the conduct of lending business is not regulated, you should therefore ensure that your lending terms and procedures for recovery of loans are fair and reasonable.



<b>HAVE YOUR SAY:</b> Have you reviewed your lending terms to ensure they are fair and reasonable?	Yes	No	N/A for my business
--	-----	----	---------------------

**6. MIFID II – A CONSULTATION ON WHETHER TO INTRODUCE AN EU EQUIVALENT REGIME IN JERSEY - UPDATE**

**What's it about?**

Mourant Ozannes has been closely involved in this JFSC consultation. The consultation, which closed in July, has now been followed by a series of working groups, which are split into the following areas: **A:** Scope – IB/FSB perimeter; **B:** Corporate Governance and limitations on number of directorships; **C:** Conduct – Best execution, commission, fees, costs and charges ; **D:** Internal Systems and Controls, including information security; and **E:** Transaction reporting. It is anticipated that a form of equivalence will be implemented, although the scope of such regime remains unresolved.

**How does this affect you?**

Services provided under existing IB registrations are likely to need to adapt to the resulting regulatory regime. Key consideration will be needed in relation to fund services including distribution and advisory services.



<b>HAVE YOUR SAY:</b> Do you keep a Regulatory Record (eg using the MO standard form) to note the exemptions relied on by each entity under your administration?	Yes	No	N/A for my business
--	-----	----	---------------------



When you respond to the questions in this update, we collect and store the responses that you submit. By clicking 'SUBMIT', you are consenting to our collecting and using that data in accordance with our Privacy Policy, which is available online at [mourantozannes.com](http://mourantozannes.com). The information which you submit to us is not anonymous, but we will not publicly attribute any answers to you.





## FINREG SPRING UPDATE SURVEY RESULTS

In our Summer edition of the FinReg bulletin we asked you to give us your views on various questions, many thanks to all of you who responded. Below are the results of the Summer survey.

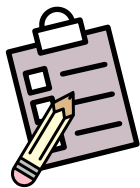


### Have you experienced instances where the JFCU appears to have unnecessarily refused to give consent following submission of a SAR?

The majority of respondents have not experienced the JFCU appearing to unnecessarily refuse consent following submission of a SAR. If such a situation arose in the future though, the UBS Trustees case does indicate that the Court is prepared to restrict the JFCU's exercise of its powers in some circumstances.

### Would you favour the introduction of regulation of lending business in Jersey for: (a) retail customers or (b) professional/corporate customers?

There's currently no proposal to introduce a new regulatory regime for the conduct of lending business in Jersey (although this is under consideration in Guernsey). If a new regime was introduced, most respondents would expect it to apply only to retail customers.



### Have you updated your complaints handling procedures to match the CIFO's model?

The results suggest an approximately even split between those businesses within the scope of the CIFO who have updated their procedures to reflect the CIFO's model complaints handling process, and those who have not.



## CONSULTATION SNAPSHOTS

### CONSULTATION NO.7 OF 2016 – AMENDMENT TO CLASS O FINANCIAL SERVICE BUSINESS

Closing 28 October 2016

Following previous consultation on the definition of Class O business, this consultation paper seeks views on a couple of changes which have been made to address subsequent difficulties which were identified. Persons registered to conduct Class O business should consider this consultation paper carefully.

### CONSULTATION NO.9 OF 2016 – TRUST COMPANY BUSINESS FEES

Closing 28 October 2016

This consultation will be relevant to all registered persons conducting trust company business. The proposals relate to fee increases.



## UPCOMING EVENTS & SEMINARS

### MOURANT OZANNES JERSEY FUNDS INDUSTRY UPDATE 2

8:30am - Tuesday 8 November 2016

This series, hosted by Mourant Ozannes' Jersey funds team, aims to provide a comprehensive overview of the latest international and local regulatory developments impacting the Jersey funds industry. If you would like to attend, please contact:  
eleanor.mulligan@mourantozannes.com

### NEWFINANCE WEALTH MANAGEMENT TECHNOLOGY

Thursday 17 November 2016

### JERSEY FINANCE ANNUAL MEMBERS CHRISTMAS DRINKS

Thursday 15 December 2016

### IOD LUNCH – SENATOR IAN GORST

Thursday 15 December 2016

### MOURANT OZANNES FINANCIAL SERVICES FORUM

Thursday 19 January 2017





## SPOTLIGHT ON: THE PROPOSED NEW FUNDS SECTION OF THE AML/CFT HANDBOOK

The JFSC has issued a consultation paper on proposals to provide additional guidance on the application of AML/CFT requirements to funds and fund operators, together with a draft of the proposed new section 14 of the Handbook. Interested parties have until 25 November 2016 to respond to the proposals.

The proposed new section does not amend any existing statutory obligations for funds or fund operators, but it is clearly intended to provide practical guidance and greater clarity through the use of diagrams and flow-charts, which is welcomed.

Of particular note is the fact that the new section is of relevance not just to funds and fund services businesses, but to a widely defined group of 'fund operators' who conduct 'financial services business' and includes the usual fund services businesses, but also bankers, auditors, legal advisers and natural persons carrying on a single class of trust company business (eg Class G directors).

The substance of the proposed new section includes detailed guidance in relation to (a) the application of CDD measures by funds and fund operators and helpfully sets out the distinction between the two, the former relating to the investors, whilst the fund operator's obligations relate to the fund, (b) the conduct of business risk assessments and customer risk assessments (in particular, with regards to factors which are required to be taken into account) and (c) the application of simplified due diligence, reliance on obliged persons and outsourcing in the context of a fund structure.

Interestingly, the new section also provides clarity in relation to the application of the Three Tier Test (ie for the identification of beneficial owners and controllers). A footnote confirms that whereas Tiers 1 and 2 are mandatory, Tier 3 is only necessary to the extent that no one is identified at Tiers 1 and/or 2. Needless to say, this will be of interest not only to funds and fund operators, but to anyone to whom the MLO applies.

A final point to note is that there is a specific concession in relation to the obligation to terminate a business relationship where there has been a failure to complete identification measures. The new section recognises that this may be problematic where other legislative or regulatory requirements apply to the relationship between the fund and its investor(s) and/or where termination may have a prejudicial effect on the interests of other investors.

In such a case, it is proposed that termination of the business relationship could be delayed until such time as compliance with the MLO does not conflict with another statutory or regulatory requirement and/or does not have any prejudicial effect on the interests of other investors. This is a helpful confirmation although the guidance indicates that businesses will still be obliged to manage the risk of money laundering or financing of terrorism. This reflects the existing obligation to consider whether or not to make a SAR in this circumstance, which will still apply. We would anticipate that in most cases it will also be necessary to block any payments relating to the relevant investor's units in the fund, whilst continuing to attempt to complete identification measures until termination can be properly effected without prejudicing other investors.

### CASSANDRA HEUGH

Associate

T +44 1534 676 087

E [cassandra.heugh@mourantozannes.com](mailto:cassandra.heugh@mourantozannes.com)



## MOURANT OZANNES COMMUNITY NEWS



2016 Winning Relay Team crossing the line

**Relay  
race**  
MOURANT OZANNES

Another great day was had by all at the Standard Chartered Jersey Marathon and Mourant Ozannes Relay Race that took place on 2nd October. Former Liverpool FC legend Ian Rush and partner Helen Ruelle started the relay race at 9:30am and, with over 350 marathon runners and over 1,350 relay runners, the streets and lanes on the route were bursting with runners and spectators, as the sun shone down on a fantastic atmosphere.

Out of the 272 teams in the relay this year, Mourant Ozannes had 13 entries from our Guernsey, Jersey and London offices and dominated the Law Cup category winning 1st, 2nd and 3rd places. The Accountant Cup was won by PWC, the Bank Cup by Standard Chartered and the Trust Cup by First Names. Well done to everyone involved!

**BACK TO THE TOP**



## INDUSTRY UPDATE TRACKER

We've chosen a few topics which are likely to have a significant impact on the current legal and regulatory landscape in Jersey – we'll update this tracker every quarter with information on Key developments that have taken place.

ANTI-MONEY LAUNDERING DEVELOPMENTS	
Ongoing work relating to Jersey's mature and sophisticated AML/CFT regime.	
<b>24 May 2016</b>	MONEYVAL publishes a positive report on Jersey's AML/CFT regime
<b>2016 to 2018</b>	Changes to legislation and regulation in response to the recommendations in the MONEYVAL report
<b>Christmas Day, 25 December 2016</b>	End of the transitional period for virtual currency exchangers to apply or give notice of registration under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the <b>SB Law</b> ), but the SB Law will otherwise apply in the meantime
<b>21 February 2017</b>	End of the transitional period for SB Law registration of non-corporate persons with a registered office in Jersey, carrying on regulated business anywhere in the world, but the SB Law will otherwise apply in the meantime
<b>25 March 2017</b>	End of the transitional period for trustees of express trusts acting otherwise than by way of business to comply with relevant measures under the Money Laundering (Jersey) Order 2008
<b>2017</b>	Industry participation in preparing the National Risk Assessment of Money Laundering and Terrorist Financing, to inform Jersey's future risk based policies relating to AML/CFT
<b>2018</b>	Jersey's next round MONEYVAL assessment visit, against the new 2012 FATF recommendations
BANK RECOVERY AND RESOLUTION	
The EU's Bank Recovery and Resolution Directive 2014 (BRRD) is intended to avoid systemic disruption in the event that any bank should fail. Jersey is proposing to introduce equivalent legislation.	
<b>1 January 2016</b>	EU Member States must have transposed Article 55 BRRD, to implement 'contractual bail-in'. EU Financial institutions will, where relevant, now require Jersey law governed agreements to indicate that relevant liabilities may be subject to bail-in
<b>April 2016</b>	Consultation closed in relation to the draft Jersey legislation for a Jersey bank recovery and resolution regime and bank winding-up procedure
<b>Late 2016</b>	Draft law likely to be debated by the States of Jersey
BENEFICIAL OWNERSHIP REPORTING AND REGISTER OF DIRECTORS	
Already ahead of other jurisdictions in relation to collecting beneficial ownership information, Jersey continues to review its position.	
<b>Historically</b>	Jersey has maintained a central register of beneficial ownership for over 20 years. Beneficial ownership information is disclosed to the Jersey Companies Registry upon incorporation of Jersey companies and partnerships
<b>April 2016</b>	Consultation closed in relation to: requiring automatic updates to be sent to the Jersey Companies Registry upon changes to beneficial ownership or control; and establishing a public register of directors
<b>11 April 2016</b>	Jersey and UK enter an agreement to reinforce existing arrangements for providing beneficial ownership information to UK law enforcement and tax authorities, including using technology to speed up responses to information requests
<b>5 July 2016</b>	European Commission adopts a proposal to increase transparency relating to ownership of companies and trusts
<b>Awaited</b>	Feedback to the April consultation paper is likely to be delayed, to allow additional consideration of Jersey's position following the UK Referendum

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please contact one of your usual Mourant Ozannes contacts.

**BACK TO THE TOP**