

# Fraud A Jersey Perspective



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A practical guide for legal practitioners to fraud proceedings in Jersey.

Investigating and pursuing serious and complex fraud claims is about staying ahead of the game. Most serious frauds will have an international element, whether in the substantive action or in asset recovery. It has therefore become increasingly important for fraud lawyers to have knowledge of offshore centres' laws and procedures in freezing and tracing assets as well as possible substantive remedies.

Jersey has a legal system which provides proactive civil and criminal international co-operation in cases of suspected fraud. Jersey has its own systems of law which do not always mirror the English position. This guide by Baker & Partners gives you a practical overview of the legislation and procedures of the Jersey legal system. It provides practical advice to help identify the most appropriate solutions in cases involving fraud, asset recovery, the enforcement of foreign judgments and insolvency. It thus provides legal practitioners with an invaluable overview of the Jersey perspective on fraud claims in an easy format.

This publication is intended for general information purposes only and should not be relied upon as a source of detailed legal advice. Information was correct at the time of publication, October 2016. Independent legal advice should be sought before taking any action based on information contained within this publication.

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# Civil Remedies

The Jersey Royal Court has consistently recognised its responsibility to assist in the prevention, detection and remedying of fraud.

Hence, in actions involving civil remedies for fraud, in some areas it has gone further than English law currently permits, and is likely to be one of the most progressive jurisdictions for pursuing civil fraud claims.

## Freezing & Disclosure Orders

Interlocutory injunctions are available on short notice. The Jersey Royal Court applies English law principles in granting injunctions.

The Jersey courts will grant freezing orders including worldwide freezing orders in appropriate cases, in aid of foreign proceedings even if the only proceedings in Jersey are for the injunction itself. It will also give leave to serve such injunctions out of the jurisdiction if the defendant is outside the territory and the only Jersey process is that of the injunction.

Wide asset disclosure orders are available as ancillary orders to freezing orders. The Royal Court may make worldwide disclosure orders against a defendant even if they are not Jersey resident.

A search and seizure order may be made where the plaintiff has a strong prima facie case and can show that the defendant has vital material and is likely to destroy that material to defeat the ends of justice and that there are no alternative remedies available. "Gagging" orders may also be made.

Injunctions are granted by the Bailiff or the Deputy Bailiff of the Royal Court, and must be applied for by way of Order of Justice with an affidavit in support, which must comply with the duty of full and frank disclosure.

A caveat (or 'opposition') is an injunction preventing the sale of Jersey real property. It is available to creditors with a liquidated claim when there is a risk of Jersey real property being sold.

## Information held by financial institutions

There is no statutory bank secrecy in Jersey. As in England, there is a duty of confidentiality upon banks.

Jersey follows the English common law principles as set out in the authority of **Tournier v National Provincial and Union Bank of England**<sup>1</sup>.

Banks owe their customers a duty not to disclose confidential information to third parties. A breach of this duty could give rise to an action in damages if loss is caused to the customer by disclosure of information. A breach of the duty or an anticipated breach could also give rise to injunctive proceedings, to prevent the bank from disclosing information or further information.

There are four general exceptions to this duty of confidentiality. These are: (i) compulsion by law; (ii) duty to the public to disclose; (iii) that the interests of the bank require disclosure; and (iv) consent of the customer, either express or implied.

Banks, and other financial service providers such as trust companies, are often made "parties cited" to freezing injunctions in Jersey and are then bound by the injunction upon service of the proceedings on them. Wide asset disclosure orders may be made against these parties cited, as ancillary orders to a freezing injunction. The obligation to comply with a court order overrides

the duty of confidentiality.

If there is insufficient information to obtain a freezing injunction, an application may be made against a third party that has been 'mixed up' in wrongdoing, under the **Norwich Pharmacal**<sup>2</sup> jurisdiction. The Court may order the third party to disclose information needed to identify a wrongdoer or to trace assets, thus enabling an application for freezing relief or for further disclosure. The information may also be used to found the basis for a substantive claim.

There are other ways which a bank or financial service provider may be compelled to disclose information about its customer or their assets. These are described below in the section 'Crime Proceedings.'

If there are civil proceedings underway overseas, courts may request that the Royal Court take and obtain evidence from a financial services business under the **Service of Process and Taking of Evidence (Jersey) Law 1960**.

Using documents obtained in Jersey proceedings for the purpose of other proceedings (for example in another jurisdiction) requires the express permission of the Jersey Royal Court. Using documents for the purpose of other proceedings without the permission of the Royal Court may amount to a contempt of court.

## Recognition and Enforcement of Foreign Decisions

Foreign judgments are not automatically enforceable in Jersey.

The registering and subsequent enforcement of a foreign judgment in Jersey is governed by the **Judgments (Reciprocal Enforcement) (Jersey) Law 1960 ("the 1960 Law")**. Statutory registration is available in respect of judgments in

<sup>1</sup> [1924KB 461]

<sup>2</sup> Norwich Pharmacal Co and Others, Customs and Excise Commissioners [1974] AC133

England and Wales, Scotland, Northern Ireland, the Isle of Man and Guernsey. The foreign judgment must be final and conclusive as between the parties (notwithstanding that it may be subject to appeal) and it must relate to payment of a sum of money which is not a sum payable in respect of taxes, fines or other penalty.

A judgment registered under the 1960 Law will be of the same force and effect as if the judgment had been a judgment originally given in the Royal Court on the date of registration. The other side may however apply to set aside the judgment in a variety of circumstances. The judgment must be set aside if the Royal Court is satisfied that the foreign court did not have jurisdiction to make the Order or that the judgment debtor did not (although duly served) receive notice of the proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear.

Foreign judgments from other jurisdictions may be recognised and enforced in Jersey in accordance with the common law rules of private international law. In **The Brunei Investment Agency and Bandone Sdn Bhd v Fidelis Nominees Ltd (and Others) [2008]**<sup>3</sup> **The Royal Court** asserted the wide remit of its inherent jurisdiction to enforce a foreign judgment. Principles of comity and the English common law principles were said to apply to Jersey but with the variation that the Royal Court also had a discretion to enforce a non-monetary judgment.

Article 9 of the **Civil Asset Recovery (International Co-operation) (Jersey) Law 2007** provides for the Royal Court to register an external civil asset recovery order if the following criteria apply:

- a. **the order is in force at the time of registration and not subject to appeal;**
- b. **if the respondent did not appear in the proceedings, the Royal Court is satisfied that he or she received notice of the proceedings in sufficient time to enable him or her to defend them and**
- c. **enforcing the order in Jersey would not be contrary to the interests of justice**

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3 [2008] JRC 152

The **Arbitration (Jersey) Law 1998** also makes provision for the enforcement of foreign arbitration awards either by action (issuing fresh proceedings and seeking a judgement from the Jersey Court giving the same relief) or by applying ex parte for leave to enforce.

## Substantive civil remedies

Jersey law recognises the concept of a constructive trust. In Jersey law, as in English law, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient so that the victim has an equitable proprietary interest in that property.

Jersey also recognises concepts of accessory liability. A personal claim can be made against a third party if they have dishonestly assisted in a breach of fiduciary duty or have knowingly received property deriving from such a breach, both causes of action giving rise to a right to compensation from the wrongdoer as if the accessory were a constructive trustee, for the benefit of the victim of the fraud.

Jersey law also allows a claim in restitution based on 'unjust enrichment'. This does not require proof of fault or blameworthiness on the part of the recipient. It means that where property in respect of which a person has an equitable proprietary interest is received by an innocent volunteer, the beneficiary has a personal claim in restitution against the recipient even where the recipient is not guilty of any fault in their receipt or handling of the property. This is however only a personal claim and no proprietary interest by way of constructive trust is established over the property in the hands of the innocent recipient. A defence of change of position is therefore available. Thus, if the monies have been dissipated by the innocent recipient they cannot be claimed from that recipient.

## Claims against Trustees

In Jersey, asset tracing and fraud claims often involve trust and corporate structures which are managed or controlled from Jersey.

The Trusts (Jersey) Law 1984 as amended (“the Trusts Law”) governs claims made against trustees. There are different limitation / prescription periods in different circumstances. In the case of non-fraudulent breaches of trust the period is three years from the date of knowledge of the breach, with a “long stop” of 21 years from the breach. In the case of fraud by a trustee however, the claim is not limited by any time period.

Not all fraud-based claims have unlimited prescription periods. The Royal Court held in **Nolan v Minerva**<sup>4</sup> that the prescription period in a claim for dishonest assistance was three years from the date when the Plaintiff had sufficient evidence to bring a claim alleging dishonesty.

Trustees of a Jersey law trust are usually exempted by way of the trust deed from liability for all acts save for gross negligence, wilful misconduct and fraud. Jersey has a thriving trusts industry and in the vast majority of cases the trustee is a corporate trustee. This usually assists with claims, as trust companies are required to have adequate professional indemnity insurance in place (with cover for directors and officers). If however a trust company does not have sufficient assets or insurance to cover any claim then directors of the corporate trustee cannot be held personally liable for such claims. Nor have ‘dog leg’ claims (where beneficiaries of a trust make a claim directly against directors of a corporate trustee) been recognised in Jersey.

4 [2014] JLR 227

## Jersey Rules on Tracing Assets in Proprietary Claims

The Royal Court in **Brazil v. Durant**<sup>5</sup> set out Jersey’s rules on asset tracing in relation to proprietary claims.

It represents a significant development of the principles of tracing away from the more restrictive approach adhered to under English law.

Jersey’s tracing rules currently depart from England in the following ways:

### 1. No distinction between common law and equitable rules of tracing

The Jersey Royal Court has expressed the view that there is little reason to follow England in preserving this technical distinction in Jersey law. Accordingly, it is likely that English rules of equitable tracing will be applicable in Jersey law.

### 2. No ‘first in, first out rule’

Jersey also declined to follow the English rule that where an innocent volunteer mixes misappropriated trust funds with his own money in a current bank account the ‘first in, first out’ rule should be used to identify the source of withdrawn funds.

### 3. A ‘clear link’ not always required

While the principle that there should be a ‘clear link’ between the plaintiff’s property and the assets in the hands of the wrongdoer remains good law, a tracing exercise should not fail because the wrongdoer has acted particularly dishonestly or cunningly by creating a so-called ‘maelstrom’. Once a plaintiff can prove that his or her assets have moved into a maelstrom, the burden of proof shifts to the defendant to show what part of the mixed fund is in fact his or hers. The Court of Appeal endorsed this approach noting that “in

5 [2012] JLR AND 1] 2013] JLR 273

appropriate cases, the necessary links can be inferred from the circumstances, even in the absence of direct evidence”.

#### 4. Improvements to property

Where stolen funds are followed into the hands of an innocent recipient who uses them to improve property that he already owns, the Jersey tracing rules allow the victim to trace the value inherent in his money into the increase in the property's value.

#### 5. Reverse Tracing

It is possible to trace fraudulent payments made into an account after relevant payments had already been made out of the same account to a third party. The question is “simply whether there is sufficient evidence to establish a clear link between the credits and debits in an account, irrespective (within a reasonable timeframe) of the order in which they occur or the state of balance of the account”. There is no limitation on how, as a matter of evidence, that link can be proved. Applying the “lowest intermediate balance” principle could give a sophisticated fraudster the ability to defeat an otherwise effective tracing claim by manipulating the sequence in which credits and debits are made to and from a bank account.

On the theme of proprietary remedies, the Royal Court in **In Re the Representation of Lloyds TSB Offshore Trust Company Limited**<sup>6</sup> ruled that as a matter of Jersey law there is a proprietary claim to a bribe, not merely a personal claim for damages. This will frequently provide an extremely important remedy to the victims of such fraud. A matter of months following the Jersey judgment the English Supreme Court ruled to a similar effect.

6 [2013] JLR 444

## Piercing the Corporate Veil

It is possible in Jersey to pierce the veil of a company.

The Royal Court has said it would apply English principles when determining whether the corporate veil of a company may be pierced. It has not yet considered the UK Supreme Court case of **Prest v Petrodel**<sup>7</sup>.

The Royal Court cannot pierce the veil of a trust – on the basis that there is no veil to pierce, as a trust does not have separate legal personality.<sup>8</sup> However, there are ways to attack a trust structure which may have similar consequences to piercing the veil. If the trust is a sham, in that the settlor never in fact gave up control of the assets to the trustees, both the settlor and the trustee intending that they would not act in accordance with the trust instrument, then the trust will be invalid and the assets will result to the settlor.

The Royal Court will not help a fraudster to benefit from ill-gotten gains using a trust or company structure. Where stolen assets are transferred to a Jersey trust or company, or assets are placed into a trust or company to defeat the claims of creditors, the court may order their repayment.

## Non Conviction-based Forfeiture

The civil confiscation regime in Jersey is governed by the **Civil Asset Recovery (International Cooperation) (Jersey) Law 2007** [“the 2007 Law”].

Essentially, the 2007 Law allows property which is judged through non-criminal

7 *Prest V Petrodel Resources Limited* [2013] UKSC 34

8 *Re Esteem Settlement* 2003 JLR 188 at pp 248-228

proceedings to be the proceeds of unlawful conduct and which is traced to Jersey to be frozen and eventually vested in the Viscount. The Law thus allows another mechanism for the proceeds of crime to be returned to a foreign country without the need for further lengthy court proceedings in Jersey. Even without a criminal conviction, the property can be returned to the government as long as it is specified in the civil asset recovery order as being 'tainted'.

The 2007 Law allows a foreign government to apply to the Attorney General to act on its behalf to register a civil asset recovery order in the Royal Court. Following registration of such an order the Attorney General can apply to the Royal Court for certain property in Jersey, specified in the civil asset recovery order to become vested in the Viscount (Jersey's official receiver). The specified property can then be returned to the foreign government. The 2007 Law also provides for property restraining orders over property in Jersey which is the subject of external civil asset recovery proceedings, which are ongoing but not yet concluded.

The 2007 Law deals with the registration and enforcement of external civil asset recovery orders. This is defined as an order made by a court or tribunal [authorised to make such orders] in civil proceedings which specifies that property specified in the order is tainted property or specifies an amount of money to be forfeited or recovered in lieu of tainted property [Article 1(1)].

Once the order is registered it can, pursuant to Article 10 of the 2007 Law be enforced by the property in question being vested in, managed, dealt with and realised by the Viscount. Before doing so however, the Royal Court will give persons with any interest in the property a reasonable opportunity to make representations to the Court. The United States Department of Justice has obtained such a judgment in Jersey, in what is believed to be the world's largest civil confiscation order in the long running Abacha litigation.

Any money which is obtained by the Viscount under Article 10 is paid into a Civil Asset Recovery Fund, pursuant to Article 11 of the 2007 Law. Monies are then applied by a Minister under any asset sharing agreement with the relevant government. Certain other costs come out of the Fund, including the Attorney General's legal costs, and the costs of administering the Fund, including the Viscounts costs.

There are also provisions within the 2007 Law for the receipt of evidence and for property restraint orders.

## Insolvency & Bankruptcy

### Rights of Creditors in Domestic Insolvency Proceedings

Jersey has two principal forms of insolvency procedure – creditors' windings up and *désastre*. Other forms of insolvency do exist, but these procedures are invoked comparatively rarely in comparison to the two main forms of insolvency.

### Creditors' winding up

Rather confusingly, a creditor is not entitled to initiate a creditors' winding up but rather it is for the directors of a company to resolve to call a shareholders' meeting to pass a special resolution to place it in to liquidation. The process of winding up is, in broad, terms, very similar to that of a creditors' winding up in English law.

In summary, creditors have the following rights:

- **To be notified of a creditors' meeting which has to take place not less than 14 days after the shareholders' meeting (in addition a notice must be placed in the Jersey Gazette not less than 10 days before the creditors' meeting);**
- **During the period before the creditors' meeting to be furnished with, free of charge, such information concerning the company's affairs as they may reasonably require;**
- **To receive a copy of the statement of affairs of the company, which must be verified on affidavit by some or all of the directors;**
- **To vote on the appointment of a liquidator (such vote by creditors to**



prevail over any nomination by the company if it is a different person];

- **The right, in the creditors' meeting, to appoint a liquidation committee consisting of not more than five persons to exercise the functions conferred on it by or under the Companies Law. Although the company may also appoint five persons, creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee. The Courts can also have input in to this process should a dispute arise. Although there is no established Jersey case law concerning the operation of a liquidation committee, it is likely the Jersey courts would have due regard to the UK insolvency legislation; and**
- **The right to remove a liquidator at any time and appoint a replacement if there is a vacancy.**

Critically, from the perspective of pursuing recoveries using civil remedies, the winding up of a company under Jersey company law bars the right to take any other proceedings in bankruptcy except the right of a creditor or the company to make an application for a *désastre*.

The liquidator, once appointed, has a wide range of powers, including undertaking investigations in to the affairs of a company. If, after such investigation, it appears to the liquidator that there has been a transgression of the Companies Law, whether a transaction at undervalue, a preference payment, wrongful trading or fraudulent trading, the liquidator may apply to court for various remedies against the relevant parties. The liquidator is also obliged to make a report to the Attorney General if it appears to him that the company or a director has committed a criminal offence or that a disqualification order should be sought as a result of his conduct.

## Désastre

Jersey company law and the rules governing bankruptcies (*désastres*) - whether personal or corporate – have been aligned so that the outcome in

each process for creditors is the same. A key difference is that unlike creditors' windings up an application for a declaration for *désastre* may only be made by a creditor of the debtor with a liquidated claim against the debtor of not less than 3,000£.

Although a public officeholder the Viscount's role differs in some key respects from that of the Official Receiver in the UK. A *désastre* is normally required to be self-funding in that his fees and any costs incurred have to be met from the company's assets. Therefore if there are not any assets to realise or there is uncertainty as to whether there are sufficient to meet his fees and costs (for example if the affairs of a company are complex but a creditor believes there are assets), a creditor making such an application will have to indemnify the Viscount and pay funds up front in order to secure his agreement to act. The provision of funding does not entitle a declaring creditor to direct or otherwise have any control over the insolvency proceedings. The Viscount operates independently of such funding.

Documentation obtained under both a creditors' winding up and *désastre* is not generally available to creditors. Accordingly, it is not appropriate to use these mechanisms in order to obtain disclosure of evidence, especially for use in other proceedings, whether in Jersey or another jurisdiction. Any information obtained must only be used for the purposes of informing the creditor of his rights in relation to the insolvency.

The Viscount in *désastre* proceedings and any liquidator appointed under a creditors' winding up have the same duties as any other person to report suspicions under Jersey's all crimes anti-money laundering regime under the **Proceeds of Crime (Jersey) Law 1999**.

## Just and equitable winding up

Jersey, as a common law jurisdiction, also has provisions whereby a company may be wound up on just and equitable grounds.

However, an application to the court under these provisions may only be made by the company, a director, a member of the company, the Chief Minister (“the Minister”) or the Jersey Financial Services Commission (“the Commission”). It is not open to creditors to make such an application. There is also a provision for winding up companies on these grounds only if it is expedient in the public interest to do so. An application under this provision can only be made by the Minister or the Commission.

Therefore, in the case of businesses regulated by the Commission it is likely that creditors or those alleging fraud, would have to engage with the Commission in order to convince it to exercise its powers to wind up a company. However, the Royal Court has a wide discretion to give directions as to the manner in which the winding-up is to be conducted and make such orders as it sees fit to ensure that the winding-up is conducted in an orderly manner.

## International Insolvencies

Jersey has both statutory and common law provisions relating to the provision of assistance to foreign courts in insolvency proceedings.

The key determinant as to which route is chosen is based on whether a country is a “relevant country or territory” as defined in secondary legislation pursuant to Article 49 of the **Bankruptcy (Désastre) Jersey Law 1990**. There are currently five such countries being Australia, Finland, Guernsey, the Isle of Man and the United Kingdom. However, in broad terms the Court adopts a similar approach to both types of application. The Viscount’s Department (see earlier for reference to the Viscount’s role) should be contacted in the first instance for all applications as the Court is likely to want to seek his views on the nature and content of the application.

The application shall be by way of a Representation supported by a Letter of Request from the court which appointed the trustee in bankruptcy, an affidavit and a copy of the appointment document. That will go the Viscount first who

will check the application and confirm that he is content with it. The burden on a representor not from a “relevant country” is greater. The application will need to be decided on the basis of comity which would require the applicant to show that the requesting jurisdiction shows reciprocity to Jersey for the purposes of any possible future request from the Island’s courts.

In cases of fraud, the orders sought may well extend beyond those usually sought in non-contentious scenarios, i.e. the application is not simply one of recognition but where specific orders are requested in furtherance of the representor’s investigations. The types of orders which can be sought are similar to those covered in Section 2 – Civil Remedies but include freezing orders, disclosure of assets/documents, examination of witnesses, gagging orders and requests to use documents in non-Jersey based proceedings. Local advice should always be sought in advance of any application containing orders of this nature.

Orders for disclosure of documents should be as specific as possible in order to avoid the Court having to reduce the scope of any relief. The same principles apply in the case of examination of witnesses. Jersey also issues requests to foreign courts for assistance, commonly where Jersey companies own English situ property and where an English insolvency procedure would be more appropriate.

## Criminal Proceedings Offences in Jersey

A generic offence of fraud has long existed in the common law of Jersey and continues to be charged in appropriate circumstances.

To establish this generic offence of criminal fraud it is necessary to show that the defendant deliberately made a false representation with the intention of causing thereby—and with the result in fact of causing thereby—actual prejudice to someone and actual benefit to himself or somebody else.

Attempts and conspiracies to commit fraud are also indictable.

The usual range of specific fraudulent activity is also criminalised by Jersey common law. Fraudulent conversion, obtaining by false pretences, false accounting and forgery are all prime examples of this.

Quite apart from this comprehensive range of common law offences, various statutes are in place to provide investor protection. **The Banking Business (Jersey) Law 1991**, for example, criminalises unregistered deposit-taking business and fraudulent inducements to invest money. Fraudulent inducement is also criminalised by the **Investors (Prevention of Fraud) (Jersey) Law 1967**. Heavy penalties are consequent upon conviction [up to 7 years' imprisonment and / or an unlimited fine].

The provision of false or misleading information under the **Collective Investment Funds (Jersey) Law 1988** is criminalised and punished by up to 10 years' imprisonment and / or an unlimited fine.

By way of further example, offences relating to insider dealing, market manipulation, and providing misleading information, in respect of financial matters are created and made punishable by the **Financial Services (Jersey) Law 1998**.

As to money laundering, the full range of offences is in place by virtue of the **Proceeds of Crime (Jersey) Law 1999**. It is of course the money laundering offence which gives territorial jurisdiction so the locus of the predicate offending is immaterial to the charging of the money laundering and the freezing of assets within the jurisdiction.

Confiscation orders are available under the legislation and are widely made following conviction. In cases with an overseas component the Jersey authorities work closely and constructively with the governments and agencies of other countries in the locating, securing, managing and ultimate disposition of assets.

Local legislation gives wide powers to the Jersey authorities to co-operate with other governments and their agencies in the investigation and prosecution of crime and the recovery of the proceeds thereof. The provision

of information and evidence and the securing of assets held in the island are all enabled by the **Investigation of Fraud (Jersey) Law 1991**, and the **Criminal Justice (International Co-operation) (Jersey) Law 2001**.

The Attorney General has the power to issue a notice to a third party such as a bank which requires disclosure of information. The procedure for such a notice is as follows. A foreign territory sends a letter of request to the Attorney General seeking his assistance in gathering information in order to assist a criminal prosecution or investigation. The Attorney General then decides whether to issue a notice to assist. Once the information has been obtained, the Attorney General decides whether and in what circumstances the information should be transmitted to the requesting foreign territory.

The Attorney General has historically sought undertakings from foreign territories that the information disclosed is only to be used in criminal proceedings. The information is typically provided on the express basis that it is not to be used in civil investigations eg. by revenue authorities.

Local legislation also enables the enforcement in Jersey of overseas forfeiture orders / confiscation orders.

The relevant authorities in Jersey are authorised to enter into asset sharing agreements with other governments when there has been anything in the nature of a combined operation resulting in the confiscation or forfeiture of assets.

As to the initiation of a criminal prosecution, initial complaints are characteristically made to the States of Jersey Police or to the Law Officers' Department. Depending on the subject matter the complaint may come to the attention of those authorities by another route, for example a complaint made to the Jersey Financial Services Commission. The complaint is ideally made through the intermediary of a local lawyer although nothing prevents a direct approach to the relevant authority by the complainant.

Following such investigation as is required by the nature of the complaint, it is for the Attorney General to decide whether to bring a prosecution and like the prosecuting authorities in the United Kingdom, his decision is taken by

reference to transparent published guidelines. The Jersey guidelines are found at the following website:

[www.gov.je/Government/NonexecLegal/LawOfficers](http://www.gov.je/Government/NonexecLegal/LawOfficers)

Proceedings are brought in the name of the Attorney General and are prosecuted by a Crown Advocate, an appointee of the Attorney General assigned to the case either from within his Department or from the private sector.

It is a feature of Jersey law that common law offences are tried by a jury and statutory offences are tried by a standing panel of lay Justices ('Jurats'), an office well known within European jurisprudence.

In either case an appeal against conviction and sentence is available. The Senior Appellate Court for these purposes is the Jersey Court of Appeal, a tribunal made up predominantly of eminent lawyers from the various United Kingdom internal jurisdictions. There is the possibility of a further appeal to the Judicial Committee of the Privy Council, but only on points of great public importance.

As to requests for international co-operation in the matter of investigation, evidence and the pursuit of criminal assets, the approach is also made in the first instance to the Attorney General, whose contact details are in the Helpful Addresses section of this booklet.

The time taken to bring prosecutions and requests to a conclusion will depend on the nature of the case and the levels of resistance encountered on the part of those who are the subject of the proceedings in question. What can be said with certainty is that the Jersey authorities continue to have an outstanding record of attention to the matters addressed here, be it domestically or internationally. Their history of co-operation with responsible partner jurisdictions is second to none and has been recognized by reporting international bodies such as the IMF and more recently, MONEYVAL, and continues to be a matter in which they take great pride.

## Anti-Money Laundering Law

The overall theme of Jersey's Anti-Money Laundering/Countering the Financing of Terrorism ("AML/CFT") regime is that it establishes standards which match international standards issued by the Financial Action Task Force on money laundering [the "FATF"].

The framework also has regard to the standards promoted by the Basel Committee on Banking Supervision, International Organisation of Securities Commissions and the International Association of Insurance Supervisors. Whilst Jersey is not a member of the EU, the AML/CFT regime takes account of the requirements of European Union legislation to counter money laundering and the financing of terrorism and its application of standards set by the FATF. Accordingly, it follows the risk based approach, an approach which is a recurring theme throughout the legislation, regulatory requirements and guidance.

Jersey's AML/CFT regime is underpinned by all crimes legislation under the **Proceeds of Crime (Jersey) Law 1999** ["the PoC legislation"] as amended. This Law applies to all money laundering crimes including those related to drugs and terrorism.

The offences under the PoC legislation are the acquisition, possession, or control or use of criminal property (whether for ones own benefit or another), and concealing, disguising, converting or transferring criminal property or removing criminal property from Jersey, each of which carries a term of imprisonment for a term not exceeding 14 years or a fine or both. There is no listing of predicate offences under the legislation but confiscation orders may be made for any offence in Jersey for which a person is liable on conviction to imprisonment for a term of one or more years.

Fiscal offences, both domestic and foreign, would qualify for a confiscation

order to be made under Jersey's common law offence of fraud, the prison term available being in excess of one year. There is also an offence of failing to disclose knowledge or suspicion of money laundering under which a person is liable to imprisonment for a term not exceeding 5 years or to a fine or to both. Failure to report provisions apply to financial services businesses and these cover both businesses regulated by the Jersey Financial Services Commission ("the Commission"), essentially banks; trust companies; investment, funds and money services businesses; and insurance companies and also other businesses termed as DNFBPs (Designated Non-Financial Business Professions) such as lawyers, accountants, estate agents and high value goods dealers. There are also 'tipping-off' provisions which make it an offence for a person who knows or suspects that the Attorney General or any police officer is acting or proposing to act in a connection with a money laundering investigation to disclose to any other person information relating to the investigation. It is also an offence to interfere with material relevant to the investigation.

Jersey also operates, in line with international standards, a financial intelligence unit known as the Joint Financial Crimes Unit ("JFCU") which is an active member of the Egmont Group. The JFCU is responsible for receiving SARs and investigating money laundering or terrorist financing under the legislation referred to earlier. Between 2011 and 2013 the JFCU received approximately 1400 requests for assistance. Given the international nature of Jersey's finance industry the JFCU often acts as a conduit for information with other jurisdictions' financial intelligence units.

Financial services businesses are also required, by secondary legislation issued under the PoC legislation, to have implemented measures to prevent and detect money laundering including identification procedures, record keeping procedures, internal reporting procedures and training procedures. Specific emphasis has been placed in the legislation on the ongoing obligations to keep client due diligence information up to date and for monitoring of relationships to occur. Limited exceptions and simplified due diligence measures are available in certain circumstances. Enhanced due diligence is required in the case of Politically Exposed Persons and where there is a higher risk of money laundering based on the risk assessment undertaken. Legislation has also been supplemented by the Commission in the form of a handbook

entitled the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism. The handbook refers to the various statutory provisions, provides the regulatory requirements expected of financial services businesses by Commission and contains guidance notes.

## Helpful Addresses

### **The Joint Financial Crimes Unit**

(the FIU of the States of Jersey Police)

Website [www.jersey.police.uk/about/departments/JFCU](http://www.jersey.police.uk/about/departments/JFCU)

Tel 612250 1534 44+

### **The Jersey Financial Services Commission**

(the regulator for the financial services industry)

Website [www.jerseyfsc.org](http://www.jerseyfsc.org)

Tel 822000 1534 44+

### **The Law Officers' Department**

(criminal prosecution service, including the Attorney General's office)

Website: [www.gov.je/Government/NonexecLegal/LawOfficers](http://www.gov.je/Government/NonexecLegal/LawOfficers)

Tel 441200 1534 [0] 44+

Fax 441299 1534 [0] 44+

Email [law.officers@gov.je](mailto:law.officers@gov.je)

Opening hours Monday to Thursday 8.45am - 5.15 pm, Friday 8.45am - 4.45pm

### **Address Law Officers' Department**

Morier House, Halkett Place, St Helier, Jersey, JE1 1DD

## Our Team

Baker & Partners has unparalleled experience in bringing and defending major international fraud claims and asset recovery actions before the Jersey Courts.

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