

STATES OF JERSEY



DRAFT TAXATION (EXCHANGE OF INFORMATION WITH THIRD COUNTRIES) (AMENDMENT No. 7) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 22nd October 2013
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT TAXATION (EXCHANGE OF
INFORMATION WITH THIRD COUNTRIES)
(AMENDMENT No. 7) (JERSEY)
REGULATIONS 201-**

REPORT

The amendment to the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations is required to serve two main objectives. Firstly, it has become increasingly evident from the experience of other jurisdictions in their compliance with the international standards for exchange of tax information, and from assessments of compliance carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes, that the current Regulations have a number of shortcomings that need to be addressed. Secondly, and this is why there is a need for an urgent response, it has become clear that these shortcomings have been a particular and material factor in delaying the response to requests for information received from the French tax authorities, delays that have been the cause of Jersey being included in the French list of non-co-operative jurisdictions.

The primary purpose of the amendment is to limit the statutory scope for appeal. When the amendment is adopted, appeals will be limited to an application for judicial review. Furthermore, if the Court finds against an appellant, an appeal against that judgment will be limited to an appeal to the Privy Council if leave to make that appeal can be obtained. This, together with favourable court judgments in respect of existing appeals, is expected to significantly reduce the number of appeals and generally enhance the process of exchanging tax information in accordance with the international standard and practice.

The amendment will also speed up the process of responding to requests by reducing the period within which information must be produced from 30 to 15 days.

The amendment, when adopted, will give our Treaty Partners, and in particular the French, a clear indication of Jersey's commitment to the effective implementation of the international standard in line with the practice of other jurisdictions. The amendment will greatly improve the position when requests for information are received in the future. However, provision is made in the amendment for existing cases to be subject to the amended Regulations where no date has yet been set to hear an appeal, or a date has been set which is more than 28 days after the coming into force of the amended Regulations. In these circumstances, the Court in determining such an appeal must apply the principles applicable on an application for judicial review. This provision will be of particular importance for the resolution of some of the existing outstanding requests from the French tax authorities which is a key to rescindment of Jersey's listing as a non-co-operative jurisdiction.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations amend the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 (“principal Regulations”).

Regulation 1 defines “principal Regulations”, a term used throughout these Regulations.

Regulation 2 amends Regulation 2 of the principal Regulations to make it clear that once the competent authority for Jersey has decided to respond to a request for tax information, it shall require the taxpayer to provide it with all such tax information that it requires for that purpose. Regulation 2 also removes the requirement (in Regulation 2(3) of the principal Regulations) to give the taxpayer a “reasonable opportunity” to provide the tax information. Instead the taxpayer may rely upon the time limits set under Regulation 4 to provide the information. Regulation 2 also removes the requirement (in Regulation 2(4) and (5) of the principal Regulations) for the competent authority for Jersey to provide to the taxpayer a written summary of reasons for requiring the taxpayer to provide the tax information.

Regulation 3 substitutes Regulation 3 of the principal Regulations to make it clear that once the competent authority for Jersey has decided to respond to a request for tax information, it shall require a third party (being a person other than the taxpayer) to provide it with all such tax information that it requires for that purpose.

New Regulation 3(4) requires the competent authority for Jersey to send the third party notice to the taxpayer unless any of the circumstances set out in paragraph (5) apply.

New Regulation 3(6) requires the competent authority for Jersey to state in the third party notice whether it prohibits the third party from disclosing to the taxpayer the third party notice or any information relating to the notice, and if it prohibits disclosure, the ground for that prohibition. If the third party notice contains a prohibition against disclosure, the third party must not disclose the third party notice or any information relating to it directly or indirectly to the taxpayer except with the consent of the competent authority for Jersey or the Royal Court.

Regulation 4 amends Regulation 4 of the principal Regulations so that the notice requesting the tax information must specify the time within which the recipient must comply with the notice, which must be not less than 15 days from the date of the notice.

Regulation 5 revokes Regulations 7, 8 and 10 of the principal Regulations, which enabled the competent authority for Jersey to apply to the Royal Court for an order to require the taxpayer or third party to comply with a notice. Enforcement is now dealt with in Regulation 12, as amended.

Regulation 6 makes consequential amendments to Regulation 10A of the principal Regulations following the revocation of Regulations 7 and 8.

Regulation 7 makes consequential amendments to Regulation 10B of the principal Regulations following the revocation of Regulations 7 and 8. It also amends the requirement to provide information that is in electronic form, so that the information must be provided in such form as is required by the notice, and where it is in electronic form it must be readily accessible and capable of being produced in visible and legible form.

Regulation 8 amends the requirements in Regulation 11 of the principal Regulations in respect of the requirement to protect evidence and, in particular, the period during which tax information must be retained.

Regulation 9 substitutes Regulation 12 of the principal Regulations. New Regulation 12 sets out the grounds on which the Bailiff may issue a warrant in respect of any premises in which it is believed there may be tax information. It gives power to a designated tax officer (or a police officer, in the case where there are reasonable grounds for believing that an offence under the principal Regulations has been or is about to be committed) to enter and search premises and to remove anything the person has reasonable grounds to believe is something specified in the warrant (or, in the case of a warrant where there are grounds for believing an offence is about to be or has been committed on the premises, evidence for the purposes of criminal proceedings). The warrant does not permit the seizure or removal of an item that is subject to legal privilege. It prohibits a person from disclosing to the taxpayer information relating to the warrant or its execution without the permission of the competent authority for Jersey or without the leave of the Royal Court. An application for a warrant may only be made with the consent of the Attorney General.

Regulation 10 substitutes Regulation 14 of the principal Regulations and adds Regulation 14A. New Regulation 14(1) sets strict time limits within which any application for judicial review may be made. An application by a taxpayer against a requirement made under Regulation 2 must be made not later than 14 days after the requirement arose; an application made by a person against a requirement made of that person in the third party notice must be made no later than 14 days after the third party notice was given to that person; and an application made by a taxpayer against a requirement made in a third party notice in respect of that taxpayer must be made no later than 14 days after the copy of the third party notice was given to the taxpayer under Regulation 3.

By new Regulation 14(2) an application for judicial review may not be made on the ground that the competent authority for Jersey has not provided the third party notice to the taxpayer or not provided it within the time limits specified in Regulation 3(4), has refused to grant permission to the third party to disclose the third party notice or any information relating to the notice to the tax payer; or has required tax information to be authenticated in a manner that is not required for the purposes of Regulation 10B(3).

New Regulation 14(3) requires a taxpayer or third party to provide the competent authority for Jersey with the information requested in the notice served under Regulation 2 or 3, within the time limits specified in the notice, despite any application for judicial review. However, the competent authority for Jersey shall not provide to the competent authority for the third country the tax information so provided until the application for judicial review is dismissed, withdrawn or discontinued, unless permitted to do so by the Royal Court.

New Regulation 14A provides for an appeal against the decision of the Royal Court to be made direct to the Privy Council.

Regulation 11 makes a consequential amendment to Regulation 15 of the principal Regulations following the revocation of Regulations 7 and 8. It removes the offence provisions relating to the revoked Regulations 7 and 8, and makes it an offence to contravene the prohibition on disclosure of information to a taxpayer, contained in Regulation 3(7) and 12(8).

Regulation 12 amends Regulation 15 of the principal Regulations as a consequence of the passing of the Separate Limited Partnerships (Jersey) Law 2011, so that if an

offence under the Regulations by a separate limited partnership is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person who is a partner of the partnership then that person is also guilty of the offence and is liable in the same manner as the separate limited partnership.

Regulation 13 inserts Regulation 16C which provides that if before the coming into force of these Regulations an appeal has been brought under Regulation 14 and no date has been set to hear the appeal, or a date has been set which is more than 28 days after the coming into force of these Regulations, then a decision must not be set aside or varied on the ground that it would be inadmissible under Regulations 14, as amended by these Regulations. When determining an appeal commenced prior to the coming into force of these Regulations, the Court must apply the principles applicable on an application for judicial review. If the appellant discontinues an appeal to which Regulation 16C applies, the competent authority for Jersey shall be liable to pay any costs incurred in the bringing of the appeal where it appears to the Royal Court that the appeal would have succeeded but for the coming into force of these Regulations.

Regulation 14 provides the title of these Regulations and states that they will come into force the day after they are made.



Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Regulations” means the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008².

2 Regulation 2 amended

In Regulation 2 of the principal Regulations –

(a) for paragraph (1) there shall be substituted the following paragraph –

“(1) Where the competent authority for Jersey decides to respond to a request concerning a taxpayer, the competent authority for Jersey shall require the taxpayer to provide to the competent authority for Jersey all such tax information that the competent authority for Jersey requires for that purpose.”

(b) paragraphs (3), (4) and (5) shall be deleted.

3 Regulation 3 substituted

For Regulation 3 of the principal Regulations there shall be substituted the following Regulation –

“3 Provision by other persons of tax information about taxpayer

(1) Where the competent authority for Jersey decides to respond to a request concerning a taxpayer, the competent authority for Jersey shall require a third party, being a person other than the taxpayer,

to provide to the competent authority for Jersey all such tax information that the competent authority for Jersey requires for that purpose.

- (2) A requirement under paragraph (1) shall be made by notice in writing.
- (3) Where a third party notice does not name the taxpayer to whom it relates, it must provide an account number or other identification for the tax information required.
- (4) Subject to paragraph (5), the competent authority for Jersey shall send to the taxpayer to whom a third party notice relates a copy of the third party notice –
 - (a) in a case where, at the time the third party notice is given, the competent authority for Jersey does not know the taxpayer's name and address – within 7 days after the third party has provided to the competent authority for Jersey the tax information required by the third party notice; or
 - (b) in any other case – within 7 days after the third party notice is given.
- (5) Paragraph (4) does not require the disclosure or provision of the third party notice to a taxpayer –
 - (a) if the competent authority for Jersey does not know the taxpayer's name and address;
 - (b) if its disclosure or provision would identify or might identify a person who has provided information that the competent authority for Jersey takes into account in deciding whether to give the notice;
 - (c) if the competent authority for Jersey is satisfied that there are reasonable grounds for suspecting that the taxpayer has committed a relevant criminal offence;
 - (d) if the competent authority for Jersey is satisfied that disclosure of information of the description contained in the notice may prejudice the assessment, collection or recovery of tax or the investigation or prosecution of tax matters; or
 - (e) if the third country has requested that the taxpayer should not be informed of any matter relating to the request on the ground that –
 - (i) disclosure to the taxpayer would identify or might identify a person who has provided information relating to the third party request,
 - (ii) there are reasonable grounds for suspecting that the taxpayer has committed a relevant criminal offence, or
 - (iii) disclosure of information of the description contained in the notice may prejudice the assessment, collection or recovery of tax or the investigation or prosecution of tax matters.
- (6) The third party notice shall –

- (a) state whether the competent authority prohibits the third party from disclosing to the taxpayer the third party notice or any information relating to the notice (including any information about a warrant issued under Regulation 12 or other information relating to enforcement); and
 - (b) if the third party notice prohibits that disclosure to the taxpayer, state the ground on which it prohibits that disclosure, by reference to one or more grounds mentioned in paragraph (5).
- (7) The third party shall not disclose the third party notice nor any information relating to it to the taxpayer that it is prohibited from so disclosing by virtue of any prohibition contained in the third party notice except –
- (a) with the written consent of the competent authority for Jersey; or
 - (b) with the consent of the Royal Court.
- (8) The competent authority for Jersey shall as soon as practicable send to the taxpayer the third party notice if the Royal Court gives consent to the third party to disclose it.
- (9) For the purposes of paragraph (5) the competent authority for Jersey shall not be treated as knowing the name or address of the taxpayer by virtue of anything provided by the third party unless, upon providing the tax information, the third party expressly draws to the attention of the competent authority for Jersey the taxpayer's name or address.
- (10) In this Regulation, a reference to the taxpayer's address is a reference to any address at which the taxpayer may be given information.”.

4 Regulation 4 amended

In Regulation 4 of the principal Regulations, for the words “30 days” there shall be substituted the words “15 days”.

5 Regulations 7, 8 and 10 revoked

Regulations 7, 8 and 10 of the principal Regulations shall be omitted.

6 Regulation 10A amended

In Regulation 10A of the principal Regulations –

- (a) in paragraph (2), the words “or an order of the Royal Court under Regulation 7 or 8” shall be deleted;
- (b) in paragraph (3), for the words “under Regulation 3 or by a court order under Regulation 8” there shall be substituted the words “by notice given under Regulation 3”.

7 Regulation 10B amended

In Regulation 10B of the principal Regulations –

- (a) in paragraphs (1) and (3), the words “or by order of the Royal Court under Regulation 7 or 8” shall be omitted;
- (b) for paragraph (2) there shall be substituted the following paragraph –
 - “(2) Where tax information is recorded in electronic or magnetic form, the person required by notice under Regulation 2 or 3 to provide that information shall –
 - (a) provide it in the form required by the notice; and
 - (b) in the case where the notice requires it to be provided in electronic form, provide it in a form that is readily accessible and capable of being produced in a visible and legible form.”.

8 Regulation 11 substituted

For Regulation 11 of the principal Regulations there shall be substituted the following Regulation –

“11 Protection of evidence

- (1) This Regulation applies if the competent authority for Jersey has –
 - (a) requested a taxpayer in writing to provide any tax information to it;
 - (b) given a taxpayer a notice under Regulation 2 requiring the taxpayer to provide to the competent authority for Jersey any tax information;
 - (c) requested a person, other than the taxpayer, in writing to provide to the competent authority for Jersey any tax information in respect of that taxpayer; or
 - (d) given a person a notice under Regulation 3 requiring the person to provide to the competent authority for Jersey any tax information.
- (2) A person in respect of which paragraph (1) applies shall not alter, conceal, destroy, or otherwise dispose of any tax information that is requested by the competent authority for Jersey or subject to a notice under Regulation 2 or 3.
- (3) Despite paragraph (2), but subject to Regulation 10C, the person may alter, destroy or otherwise dispose of tax information to which the competent authority’s request relates –
 - (a) in a case where a written request was made –
 - (i) if no notice has been given under Regulation 2 or 3, upon the expiry of 12 months after the date of the written request, or
 - (ii) if the Competent authority for Jersey has withdrawn the request, any time after that withdrawal; and

- (b) in a case where a notice has been given under Regulation 2 or 3 –
 - (i) with the written permission of the competent authority for Jersey, or
 - (ii) where the competent authority for Jersey has refused to grant permission, or failed to respond to the applicant's request for permission within 6 months of the request, with the leave of the Royal Court.”.

9 Regulation 12 substituted

For Regulation 12 of the principal Regulations there shall be substituted the following Regulation –

“12 Search and seizure

- (1) The Bailiff may issue a warrant under this Regulation in respect of any premises if the Bailiff is satisfied that there are reasonable grounds for believing –
 - (a) that a taxpayer has failed to comply with a requirement made of that taxpayer under Regulation 2;
 - (b) that a person to whom a third party notice has been given has failed to comply with a requirement made of that third party under Regulation 3;
 - (c) that there are reasonable grounds for believing that a taxpayer will not comply with a requirement made of the taxpayer under Regulation 2;
 - (d) that there are reasonable grounds for suspecting that a person will not comply with a requirement made of a third party under Regulation 3;
 - (e) that there are reasonable grounds for believing that the use of the procedure in Regulation 2 or 3 might seriously prejudice an investigation concerning the assessment, collection or recovery of tax or the investigation or prosecution of tax matters; or
 - (f) that an offence under these Regulations has been or is about to be committed on the premises,and there is or may be in the premises tax information in respect of a taxpayer or evidence relating to the commission of an offence under these Regulations or to a relevant criminal offence.
- (2) An application for the issue of a warrant under paragraph (1) may be made by –
 - (a) where the application is on the ground specified in paragraph (1)(a), (1)(b), (1)(c), (1)(d) or (1)(e), a designated tax officer;
 - (b) where the application is on the ground in paragraph (1)(f), a police officer.

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- (3) A warrant issued under this Regulation shall –
 - (a) remain in force for 14 days and shall then cease to have effect; and
 - (b) authorize the person executing it to enter and search the premises specified in it and, for that purpose, take with him or her such other persons as are reasonably necessary.
 - (4) On entering the premises under the authority of the warrant, the person executing it may seize and remove anything found there if –
 - (a) in the case of a warrant issued on the ground in paragraph (1)(a), (1)(b), (1)(c), (1)(d) or (1)(e), the person has reasonable grounds to believe that it is a thing specified in the warrant;
 - (b) in the case of a warrant issued on the ground in paragraph (1)(f), the person has reasonable grounds to believe that it may be required as evidence for the purposes of criminal proceedings under these Regulations.
 - (5) The warrant does not authorize the seizure or removal of an item that is subject to legal privilege.
 - (6) Where any tax information is kept by means of a computer at the premises the person executing the warrant –
 - (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the tax information;
 - (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him or her such assistance as he or she may reasonably require; and
 - (c) may require the records to be produced in a form in which they may be taken away.
 - (7) Where anything is seized and removed in exercise of a warrant issued on the ground specified in paragraph (1)(a), (1)(b), (1)(c), (1)(d) or (1)(e), the person executing it shall pass it to the competent authority for Jersey.
 - (8) Notwithstanding any other enactment (whenever passed or made) or rule or principle of law a person required by paragraph (6) to pass anything to the competent authority for Jersey shall not incur any civil or criminal liability by reason of complying with the requirement.
 - (9) No person shall disclose to the taxpayer in respect of whom the tax information or the warrant relates any information relating to the warrant, or the execution of the warrant that has been issued under paragraph (1)(e) or (1)(f) except –
 - (a) with the written consent of the competent authority for Jersey; or
 - (b) with the consent of the Royal Court.

- (10) Any application to the Royal Court in respect of a warrant that has been issued on a ground specified in paragraph (1)(a), (1)(b), (1)(c), (1)(d) or (1)(e) shall not be considered by the Court if it is received 7 or more days after the execution of the warrant.
- (11) The time limit referred to in paragraph (10) does not apply in respect of an application for consent to disclose information to a taxpayer.
- (12) In this Regulation, ‘designated tax officer’ means –
 - (a) the Comptroller; or
 - (b) each other officer who is designated in writing for the purposes of this Regulation by the Comptroller.
- (13) An application for a warrant shall not be made under this Regulation without the consent of the Attorney General.”.

10 Regulation 14 substituted

For Regulation 14 of the principal Regulations there shall be substituted the following Regulations –

“14 Judicial review: limitations

- (1) Despite any Rule made to the contrary under the Royal Court (Jersey) Law 1948³, an application for judicial review may not be made –
 - (a) by a taxpayer, against a requirement made of that taxpayer under Regulation 2, later than 14 days after the requirement arose under Regulation 2;
 - (b) by a person, against a requirement made of that person in a third party notice, later than 14 days after the third party notice was given to that person under Regulation 3; or
 - (c) by a taxpayer, against a requirement made of a third party in respect of that taxpayer, later than 14 days after the copy of the third party notice was given to that taxpayer under Regulation 3.
- (2) An application for judicial review may not be made on any of the following grounds –
 - (a) that the competent authority for Jersey has not provided the third party notice to a taxpayer within the time limits specified in Regulation 3(4);
 - (b) that the competent authority for Jersey has not provided the third party notice to the taxpayer on a ground mentioned in Regulation 3(5);
 - (c) that the competent authority for Jersey has prohibited a third party from disclosing the third party notice to the taxpayer, or any information relating to the notice to the taxpayer on a ground mentioned in Regulation 3(5); or

- (d) that the competent authority for Jersey has required tax information to be authenticated in a manner that is not required for the purposes of Regulation 10B(3).
- (3) Despite any application for judicial review being made –
 - (a) a taxpayer or a third party shall provide the competent authority for Jersey the information requested in the notice served under Regulation 2 or 3, as the case may be, within the time limits specified in the notice; but
 - (b) the competent authority for Jersey shall not provide to the competent authority for the third country the tax information obtained under these Regulations unless –
 - (i) the application is dismissed,
 - (ii) the application is withdrawn or discontinued, or
 - (iii) the competent authority for Jersey is permitted to do so by the Royal Court.
- (4) In all other respects the Royal Court shall apply the principles applicable on an application for judicial review.

14A Further appeal to Privy Council

- (1) An appeal lies to the Privy Council from a decision of the Royal Court on a judicial review to which Article 14 applies.
- (2) An appeal under this Article lies at the instance of –
 - (a) a taxpayer, against a requirement made of that taxpayer under Regulation 2;
 - (b) a person, against a requirement made of that person in a third party notice;
 - (c) a taxpayer, against a requirement made of a third party in respect of that taxpayer; or
 - (d) the competent authority for Jersey.
- (3) An appeal under this Article lies only with the leave of the Privy Council.
- (4) An application to the Privy Council for leave to appeal under this Article against a decision shall be made before the end of the period of 14 days commencing on the day on which the Royal Court makes its decision.
- (5) If leave to appeal under this Article is granted, the appeal shall be brought before the end of the period of 14 days commencing on the day on which leave is granted.
- (6) If paragraph (5) is not complied with –
 - (a) the appeal shall be taken to have been brought; and
 - (b) the appeal shall be taken to have been dismissed by the Privy Council immediately after the end of the period specified in that paragraph.
- (7) For the purpose of paragraph (6)(b) –

- (a) any power of a court to extend the period permitted for giving notice of appeal; and
- (b) any power of a court to grant leave to take a step out of time, shall be disregarded.

(8) The Privy Council may allow or dismiss the appeal.”.

11 Regulation 15 amended

In Regulation 15 of the principal Regulations –

- (a) in paragraph (2), the words “or by order of the Royal Court under Regulation 7 or 8” shall be omitted;
- (b) for paragraph (3) there shall be substituted the following paragraph –

“(3) A person who knowingly and without reasonable excuse –

- (a) fails to comply with a requirement imposed under Regulation 2(1) or 3(1); or
 - (b) contravenes Regulation 3(7) or 12(9),
- is guilty of an offence.”.

12 Regulation 16 amended

In Regulation 16(2) of the principal Regulations after the words “limited liability partnership” there shall be inserted the words “, separate limited partnership”.

13 Regulation 16C inserted

After Regulation 16B of the principal Regulations there shall be inserted the following Regulation –

“16C Transitional provision

- (1) This Regulation applies where, before the coming into force of the Taxation (Exchange of Information with Third Countries) (Amendment No. 7) (Jersey) Regulations 201-⁴ (the ‘2013 Regulations’) –
 - (a) an appeal has been brought under Regulation 14; and
 - (b) no date has been set to hear the appeal, or a date has been set which is more than 28 days after the coming into force of the 2013 Regulations.
- (2) A decision shall not be set aside or varied on a ground that would be inadmissible under Regulation 14, as amended by the 2013 Regulations.
- (3) In determining an appeal under Regulation 14 the Court must apply the principles applicable on an application for judicial review.

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- (4) If the Court decides that a notice or requirement should be set aside or varied it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.
 - (5) If the appellant discontinues an appeal to which this Regulation applies, the competent authority for Jersey shall be liable to pay any costs incurred in the bringing of the appeal where it appears to the Royal Court that the appeal would have succeeded but for the coming into force of the 2013 Regulations.
 - (6) Any appeal shall be subject to Regulation 14A, as inserted by the 2013 Regulations, as if it arose from a judicial review made under Regulation 14, as substituted by the 2013 Regulations.”.

14 Citation and commencement

These Regulations may be cited as the Taxation (Exchange of Information with Third Countries) (Amendment No. 7) (Jersey) Regulations 201- and shall come into force on the day after they are made.

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- ¹ *chapter 17.850*
² *chapter 17.850.30*
³ *chapter 07.770*
⁴ *P.132/2013*