

STATES OF JERSEY



Jersey

DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT) (JERSEY) LAW 202-

**Lodged au Greffe on 18th May 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 29th June 2021**

STATES GREFFE



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DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Proceeds of Crime (Supervisory Bodies) (Amendment) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations and Financial Services

Dated: 17th May 2021

REPORT

Jersey has a long-term policy of compliance with International Standards on anti-money laundering and countering the financing of terrorism (“AML/CFT”) as set out by the Financial Action Task Force (the “FATF”) – the international standard setter on financial crime. Government remains absolutely committed to that policy in furtherance of the worldwide fight against financial crime.

FATF Recommendation 26 (Regulation and Supervision of Financial Institutions) requires the formal integration of the concept of a “risk-based approach” into all aspects of the AML/CFT regime. This is very clear in the Recommendations relating to supervision, particularly when viewed alongside the Interpretive Notes and the Methodology.

The FATF Assessment Methodology, at criterion 26.5, states that –

“The frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions or groups should be determined on the basis of:

- (a) the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisor’s assessment of the institution’s or group’s risk profile;*
- (b) the ML/TF risks present in the country; and*
- (c) the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach.”*

The FATF Assessment Methodology, at criterion 26.6, states that –

“The supervisor should review the assessment of the ML/TF risk profile of a financial institution or group (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution or group.”

In furtherance of the implementation of Recommendation 26 of the FATF Recommendations, the draft amendment seeks to introduce the following in the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#):

- I. a definition for “risk-based approach” –

“determining the scrutiny that a supervised person or supervised business requires on the basis of –

 - (a) the ML/TF risks and the policies, internal controls and procedures associated with the supervised person or supervised business, as identified by the supervisory body’s assessment of the supervised person’s or supervised business’s risk profile;*
 - (b) the ML/TF risks present in the jurisdiction in which the supervised person or supervised business is based;*
 - (c) any other characteristic of the supervised person or supervised business that the supervisory body reasonably considers to be relevant.”*

- II. A requirement that in performing its obligations under Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, a supervisory body must use a “risk-based approach”.
- III. A requirement that the supervisory body must take account of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation published by the Financial Action Task Force, in devising a risk profile for a supervised person or a supervised business.

Financial and manpower implications

There are no other resource implications for the Government of Jersey that would arise as a consequence of adopting this Draft Law.

Human Rights

No human rights notes are included in this proposition as the Law Officers’ Department have confirmed that the Draft Law raises no issues of compliance with the European Convention on Human Rights.

EXPLANATORY NOTE

The Proceeds of Crime (Supervisory Bodies) (Amendment) (Jersey) Law 202-, if passed, will insert a new Article 8A (duty of supervisory body to use a risk-based approach) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “principal Law”) to –

- provide that a supervisory body must use a risk-based approach in performance of its duties under the principal Law;
- insert a definition of “risk-based approach”;
- provide that a supervisory body that devises a risk profile for a supervised person or business must take account of the FATF recommendations.

The Law will come into force 7 days after it is registered.



Jersey

DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT) (JERSEY) LAW 202-

A LAW to amend the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Article 8A (duty of supervisory body to use a risk-based approach) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 inserted

After Article 8 (general powers of supervisory bodies) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008¹ there is inserted –

“8A Duty of supervisory body to use a risk-based approach

- (1) In performing its obligations under this Law, a supervisory body must use a risk-based approach.
- (2) In this Article, “risk-based approach” means determining the scrutiny that a supervised person or supervised business requires on the basis of the following –
 - (a) the money laundering and terrorist financing risks associated with the supervised person or supervised business, as identified under paragraph (3) by the supervisory body’s assessment of the supervised person’s or supervised business’s risk profile;
 - (b) the policies, internal controls and procedures associated with the supervised person or supervised business, as identified under paragraph (3) by the supervisory body’s assessment of the supervised person’s or supervised business’s risk profile;

- (c) the money laundering or terrorist financing risks present in the jurisdiction in which the supervised person or supervised business is based;
 - (d) any other characteristic of the supervised person or supervised business that the supervisory body reasonably considers to be relevant.
- (3) In devising a risk profile for a supervised person or a supervised business, the supervisory body must take account of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation as published from time to time by the international body known as the Financial Action Task Force.”.

2 Citation and commencement

This Law may be cited as the Proceeds of Crime (Supervisory Bodies) (Amendment) (Jersey) Law 202- and comes into force 7 days after it is registered.

ENDNOTES

Table of Endnote References

[1](#) *chapter 08.785*