

# **STATES OF JERSEY**



## **DRAFT PROCEEDS OF CRIME (AMENDMENT OF SCHEDULE 2) (JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 28th July 2008  
by the Minister for Treasury and Resources**

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**STATES GREFFE**





Jersey

## **DRAFT PROCEEDS OF CRIME (AMENDMENT OF SCHEDULE 2) (JERSEY) REGULATIONS 2008**

### **REPORT**

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#### **PROPOSALS TO AMEND THE LIST OF BUSINESS ACTIVITIES TO WHICH THE MONEY LAUNDERING (JERSEY) ORDER 2008 APPLIES**

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These draft Regulations amend Schedule 2 of the Proceeds of Crime (Jersey) Law 2008 (“**Schedule 2**”), which was last revised on 19th February 2008.

The draft Regulations are necessary as a consequence of –

- A need for greater clarity on the application of the Money Laundering (Jersey) Order 2008 (“**Money Laundering Order**”) to fund products. The application of the Money Laundering Order to recognized funds, unclassified funds, unregulated funds, and what are referred to as “COBO only” funds is now more clearly set out.
- Changes made to the regulatory framework for fund products by the Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008 on 4th April 2008, which introduced a requirement for unclassified funds to hold certificates.
- The identification of some additional activities that may be considered to present a lower risk of money laundering and which may be excluded from the definition of “financial services business”. In particular, it is proposed that certain general partners and special purpose vehicles should not be required to comply with obligations to prevent and detect money laundering when administered by a trust company business that is subject to such obligations.
- The need to clearly set out the application of the Money Laundering Order to lawyers and estate agents that are involved in property transactions that are affected by share transfer.
- The correction of some anomalies that have been highlighted since the Regulations came into force, in particular the application of the Money Laundering Order to money service business that is exempt from regulation under Article 3 of the Financial Services (Money Service Business) (Exemptions) (Jersey) Order 2007. The Regulations will make it clear that those giving change in a different currency to that tendered for items purchased are outside the scope of Schedule 2.

The Island’s framework to counter money laundering and the financing of terrorism will be subject to review by the International Monetary Fund in October 2008.

#### **Financial and manpower implications**

These draft Regulations will have no implications for the financial or manpower resources of the States.

## **Explanatory Note**

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The object of these Regulations is to update the list of businesses in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 to fine-tune the application of the Money Laundering (Jersey) Order 2008 to –

- (a) collective investment funds (after changes to their regulation under the revamped Collective Investment Funds (Jersey) Law 1988);
- (b) unregulated funds (after the making of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008);
- (c) collective investment funds that are not the subject of public offers (that is, funds that are only regulated under the Control of Borrowing (Jersey) Order 1958);
- (d) certain general partners and special purpose vehicles (to avoid double regulation);
- (e) certain overseas persons (again to avoid double regulation);
- (f) certain minor currency exchange transactions (to avoid unnecessary regulation); and
- (g) the buying and selling of share transfer property (to remove any doubt that these are subject to the Money Laundering (Jersey) Order 2008).

These Regulations are intended to come into force at the same time as the Proceeds of Crime (Supervisory Bodies) (Amendment of Law) (Jersey) Regulations 200-.





Jersey

## DRAFT PROCEEDS OF CRIME (AMENDMENT OF SCHEDULE 2) (JERSEY) REGULATIONS 200

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Article 36(2) of the Proceeds of Crime (Jersey) Law 1999<sup>[1]</sup>, have made the following Regulations –

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### 1 Amendment of Part A of Schedule 2

In Part A of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>[2]</sup> –

(a) for the title of the Part there shall be substituted the following title –

#### “PART A

#### BUSINESS REGULATED BY THE COMMISSION UNDER REGULATORY LAWS”;

(b) for paragraph 3 there shall be substituted the following paragraph –

“3.(1) Any of the following within the meaning of the Collective Investment Funds (Jersey)

Law 1988<sup>[3]</sup> –

- (a) the business of being a functionary;
- (b) the business of a recognized fund;
- (c) the business of an unclassified fund;
- (d) the business of a scheme or arrangement that would be a collective investment fund except for the fact that the capital, the collective investment of which is the object or one of the objects of the scheme or arrangement, is not acquired by means of an offer to the public of units for subscription, sale or exchange.

(2) However, business referred to in sub-paragraph (1) does not include the business of a company, being a company issuing units that is within Article 1A of the Collective Investment Funds (Permits) (Exemptions) (Jersey) Order 1994<sup>[4]</sup>.”;

(c) in paragraph 4 –

(i) for sub-paragraph (a)(i) there shall be substituted the following clause–

“(i) paragraphs 1, 3B, 4, 10, 14 and 15.”;

(ii) after sub-paragraph (a)(iv) there shall be inserted the following clause–

“(v) paragraph 18, except where the special purpose vehicle is not administered by a person registered under that Law to carry on trust company business.”;

- (iii) for sub-paragraph (f) there shall be substituted the following sub-paragraph –
- “(f) excluding trust company business carried on by a person specified in any of the paragraphs in the Schedule to the Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001<sup>[5]</sup> specified below where that business is carried on in the circumstances described in that paragraph –
    - (i) paragraph 1 (private protector company),
    - (ii) paragraph 2 (general partner),
    - (iii) paragraph 4 (investment company subsidiary);”;
- (iv) after sub-paragraph (g) there shall be inserted the following sub-paragraph –
- “(h) excluding money service business specified in Article 3 of the Financial Services (Money Service Business) (Exemptions) (Jersey) Order 2007<sup>[6]</sup>.”.

## 2 Amendment of Part B of Schedule 2

In Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999–

- (a) for the title of the Part there shall be substituted the following title –

**“PART B  
OTHER BUSINESS”;**

- (b) for paragraph 1(2) there shall be substituted the following sub-paragraph –
- “(2) In this paragraph ‘independent legal professionals’ means those who by way of business provide legal or notarial services to third parties when participating in financial, or immovable property, transactions concerning any of the following –
    - (a) the buying and selling of immovable property or business entities;
    - (b) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;
    - (c) the managing of client money, securities or other assets;
    - (d) the opening or management of bank, savings or securities accounts;
    - (e) the organization of contributions necessary for the creation, operation or management of companies; or
    - (f) the creation, operation or management of trusts, companies or similar structures.”;
- (c) for paragraph 3 there shall be substituted the following paragraph –

### **“3 Estate agency services**

- (1) The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property), whether the property is situated in Jersey or overseas.
  - (2) The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of shares the ownership of which entitles the owner to occupy immovable property, whether the property is situated in Jersey or overseas.”;
- (d) for paragraph 6 there shall be substituted the following paragraph –

## **“6 Unregulated funds**

The business of an unregulated fund, being an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008<sup>[7]</sup>.”.

### **3 Citation and commencement**

- (1) These Regulations may be cited as the Proceeds of Crime (Amendment of Schedule 2) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on the same day as Article 11(4) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>[8]</sup>.



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- [1] *chapter 08.780*
- [2] *chapter 08.780*
- [3] *chapter 13.100*
- [4] *chapter 13.100.30*
- [5] *chapter 13.225.65*
- [6] *chapter 13.225.41*
- [7] *R&O.28/2008*
- [8] *L.32/2008*