

STATES OF JERSEY

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DRAFT PROCEEDS OF CRIME (SUBSTITUTION OF SCHEDULE 2) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 24th September 2007
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT PROCEEDS OF CRIME (SUBSTITUTION OF SCHEDULE 2) (JERSEY) REGULATIONS 200-

REPORT

In response to an improved understanding of the threat of money laundering and terrorist financing, the Financial Action Task Force (the “**FATF**”) – the body that sets international standards for combating money laundering and the financing of terrorism, has expanded the sectors that it expects to be subject to measures to combat money laundering and terrorist financing (“**measures**”) to include sectors previously considered to be outside of the traditional financial sector.

The additional sectors that are to be covered by measures – referred to by the FATF as “designated non-financial businesses and professions” – are: casinos (which also includes internet casinos); real estate agents; dealers in precious metals; dealers in precious stones; lawyers, notaries, other independent legal professionals and accountants; and trust and company service providers.

Other jurisdictions have already amended legislation in line with the FATF Recommendations, including Member States of the European Union (the “**EU**”). In the EU, in addition to the sectors set out in the FATF Recommendations, the Third Money Laundering Directive has extended obligations to: high value goods dealers when accepting payment in cash for €15,000 or more; and auditors and tax advisors.

The Proceeds of Crime (Substitution of Schedule 2) (Jersey) Regulations 200- (the “**Regulations**”) amend Schedule 2 so that it defines the sectors to which measures will apply in a way that is consistent with the UK’s implementation of the Third Money Laundering Directive. This is because it will be important for the Island to be able to demonstrate to the European Commission and to Member States of the EU that Jersey has applied measures that are equivalent to those set out in the Directive – in order to facilitate the continued access of Jersey businesses to EU markets.

The Regulations will apply for the first time to: certain activities of independent legal professionals; accountants, auditors, tax advisors, and providers of insolvency services; estate agents; and dealers in high value goods. The Regulations will not extend to casinos (including internet casinos) – since such activities are not permitted in Jersey and the Jersey Financial Services Commission is not aware of any Jersey companies conducting such activities outside Jersey. However, in line with the FATF Recommendations, Schedule 2 will be extended at a later date to cover such activities.

In line with the FATF Recommendations, Schedule 2 will no longer cover general insurance business, proprietary trading in instruments and securities, or the activity of providing credit references.

Schedule 2 has also been revised so as to exclude from its application a limited number of “low-risk” persons. These are persons that are conducting deposit-taking business, insurance business, or financial service business, which are covered by exemptions or exclusions under applicable regulatory legislation – where it is clear that there is little risk of money laundering activity occurring.

The measures that are to be applied to the additional sectors will be established through the Money Laundering (Jersey) Order 1999. An adequate period of time will be allowed in order to allow businesses to introduce such measures as will be necessary to comply with the Money Laundering (Jersey) Order 1999.

The Island’s framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund in 2008.

Financial/manpower implications

Based on initial projections an additional 2 staff will be required (2 F.T.E.) for the Joint Financial Crimes Unit

(JFCU) at an annual cost of £115,000 (as at June 2007 pay rates). The projections will be reviewed post-implementation and additional resources sought if required.

Explanatory Note

These Regulations add further types of business that are subject to anti-money laundering measures under the Proceeds of Crime (Jersey) Law 1999 (“the principal Law”). They also specify exceptions to businesses subject to such measures.

Regulation 1 is an interpretation provision.

Regulation 2 substitutes Schedule 2 to the principal Law. The Schedule specifies the types of business subject to prescribed money laundering measures. It specifies businesses not previously subject to money laundering measures, including estate agents and lawyers. The Schedule also introduces a number of exceptions to the types of business specified that are considered to be low-risk and therefore not required to comply with such measures.

Regulation 3 specifies the name by which the Regulations may be cited and provides that they will come into force 7 days 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 36(2) of the Proceeds of Crime (Jersey) Law 1999^[1], have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Proceeds of Crime (Jersey) Law 1999^[2].

2 Substitution of Schedule 2 to the Law

For the Second Schedule to the Law there shall be substituted the following Schedule –

“SCHEDULE 2

(Article 36(1) and (2))

FINANCIAL SERVICES BUSINESS

PART A

BUSINESSES REGULATED BY THE COMMISSION

1. Any deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991^[3] except the doing of anything described in Article 8(2) (a) to (c) of that Law.
2. Any long-term business as defined in Article 1(1) of the Insurance Business (Jersey) Law 1996^[4] except –
 - (a) insurance business described in Article 5(5)(a) of that Law;
 - (b) insurance business described in Article 1 of the Insurance Business (General Provisions) (Jersey) Order 1996.
3. The business of being a functionary as defined in Article 1 of the Collective Investment Funds (Jersey) Law 1988^[5].
4. Financial service business as defined in Article 1(1) of the Financial Services (Jersey) Law 1998^[6] –

- (a) including the activities described in Schedule 2 to that Law except those mentioned in –
 - (i) paragraphs 1, 4, 10, 14 and 15,
 - (ii) paragraph 7 where a person accepts or becomes a party to an instrument as principal,
 - (iii) paragraph 8 where the persons described in subparagraphs (1), (2) or (3) are connected companies, except in the circumstances described at the end of sub-paragraph (2) or (3),
 - (iv) paragraph 16 except where a person is acting as a protector of a trust by way of business;
- (b) excluding general insurance mediation business;
- (c) excluding investment business carried on by an overseas person mentioned in Article 1 of the Financial Services (Investment Business (Overseas Persons–Exemption)) (Jersey) Order 2001^[7] where that business is carried on in the circumstances described in that Order;
- (d) 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)) (Jersey) Order 2000^[8] specified below where the business is carried on in the circumstances described in that paragraph –
 - (i) paragraph 8 (address providers),
 - (ii) paragraph 11 (connected company),
 - (iii) paragraph 12 (introducer),
 - (iv) paragraph 13 (director),
 - (v) paragraph 15 (director – registered person),
 - (vi) paragraph 16 (liquidators and trustees in bankruptcy of persons other than registered persons),
 - (vii) paragraph 18 (recruitment agents);
- (e) 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. 2) (Jersey) Order 2000^[9] specified below where that business is carried on in the circumstances described in that paragraph –
 - (i) paragraph 1 (overseas persons),
 - (ii) paragraph 2 (unit holding nominee company),
 - (iii) paragraph 3 (electronic communications service providers);
- (f) excluding trust company business carried on by a person specified in either of the paragraphs in the Schedule to the Financial Services (Trust Company Business (Exemptions No. 3) (Jersey) Order 2001^[10] specified below where that business is carried on in the circumstances described in that paragraph –
 - (i) paragraph 1 (private protector company),
 - (ii) paragraph 4 (investment company subsidiary);
- (g) excluding trust company business carried on by a person specified in paragraph 1 (connected persons) of the Schedule to the Financial Services (Trust Company Business (Exemptions No. 4) (Jersey) Order 2001^[11] where that business is carried on in the circumstances mentioned in that paragraph.

PART B

OTHER BUSINESSES

1 Lawyers

- (1) The business of providing services by independent legal professionals.
- (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 managing of client money, securities or other assets;
 - (c) the opening or management of bank, savings or securities accounts;
 - (d) the organisation of contributions necessary for the creation, operation or management of companies; or
 - (e) the creation, operation or management of trusts, companies or similar structures.
- (3) Sub-paragraph (2) does not include legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.
- (4) For the purposes of this paragraph, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a third party in the transaction.

2 Accountants

- (1) The business of providing any of the following–
 - (a) external accountancy services;
 - (b) advice about the tax affairs of another person;
 - (c) audit services; or
 - (d) insolvency services.
- (2) 'External accountancy services' means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties.
- (3) 'Audit services' are audit services provided by way of business pursuant to any function under any enactment.
- (4) 'Insolvency services' are services provided by a person if, by way of business, that person accepts appointment as –
 - (a) a liquidator under Chapter 4 of Part 21 of the Companies (Jersey) Law 1991^[12];
 - (b) an insolvency manager appointed under Part 5 of the Limited Liability Partnerships (Jersey) Law 1997^[13] as that Law has effect in its application to insolvent limited liability partnerships pursuant to the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998^[14]; or
 - (c) as agent of an official functionary appointed in the case of a *remise de biens*, *cession*, or *désastre*.

3 Estate agency services

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.

4 Services provided by high value dealers

'High value dealers' means persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least 15,000 Euros (or sterling equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.

5 Other services

The business of providing any of the following services to third parties not otherwise included in this Schedule –

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), financing of commercial transactions (including forfeiting);
- (c) financial leasing;
- (d) money transmission services;
- (e) issuing and administering means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money);
- (f) guarantees and commitments;
- (g) trading for the account of third parties in –
 - (i) money market instruments (cheques, bills, certificates of deposit, derivatives etc.),
 - (ii) foreign exchange,
 - (iii) futures and options (financial and commodity),
 - (iv) exchange, interest rate and index instruments,
 - (v) transferable securities;
- (h) participation in securities issues and the provision of services related to such issues;
- (i) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
- (j) money broking;
- (k) portfolio management and advice;
- (l) safekeeping and administration of securities;
- (m) safe custody services;
- (n) otherwise investing, administering or managing funds or money on behalf of third parties.

6 The business of forming and administering legal persons or arrangements

The business of providing services to or in respect of types of legal person or arrangement other than those described in Article 2(5)(a) and (b) of the Financial Services (Jersey) Law 1998, in the course of which services are provided that are similar or equivalent to those described in Article 2(4) of that Law as if Article 2(4) referred to that type of legal person or

arrangement.”.

3 Citation and commencement

These Regulations may be cited as the Proceeds of Crime (Substitution of Schedule 2) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

[1]	<i>chapter 08.780</i>
[2]	<i>chapter 08.780</i>
[3]	<i>chapter 13.075</i>
[4]	<i>chapter 13.425</i>
[5]	<i>chapter 13.100</i>
[6]	<i>chapter 13.225</i>
[7]	<i>chapter 13.225.25</i>
[8]	<i>chapter 13.225.55</i>
[9]	<i>chapter 13.225.60</i>
[10]	<i>chapter 13.225.65</i>
[11]	<i>chapter 13.225.70</i>
[12]	<i>chapter 13.125</i>
[13]	<i>chapter 13.475</i>
[14]	<i>chapter 13.475.10</i>