

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME (FINANCIAL INTELLIGENCE) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 16th January 2015
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT PROCEEDS OF CRIME (FINANCIAL INTELLIGENCE) (JERSEY) REGULATIONS 201-

REPORT

In 2009, the International Monetary Fund (the “IMF”) published a report on Jersey’s compliance with the 40+9 Recommendations of the Financial Action task Force (the “FATF”) on anti-money laundering and countering the financing of terrorism.

The Island has been preparing for and is about to undergo its next Mutual Evaluation, which is scheduled for January 2015 and is due to be carried out by MONEYVAL, a body of the Council of Europe. In preparation for the Mutual Evaluation, there has been a variety of legislation lodged *au Greffe* over the previous months and years. The Draft Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 201- (the “draft Regulations”) are another example of legislation preparing for the Mutual Evaluation.

The draft Regulations formally establish in legislation a Financial Intelligence Unit (“FIU”) as the Joint Financial Crime Unit of the States of Jersey Police Force, and determine that it shall carry out the functions of such a unit as defined by Article 41(B)1 of the Proceeds of Crime (Jersey) Law 1999. The Joint Financial Crime Unit of the States of Jersey Police Force has existed for some time – this legislation simply formalises its existence and powers in legislation.

The draft Regulations further provide powers for the FIU to gather information in certain circumstances. There are specific criteria required for making a request detailed in the Regulations, and details of the categories of information which may lawfully be sought. The Regulations make it an offence not to comply with a valid request for information. Finally, the draft Regulations make consequential amendments to the Money Laundering (Jersey) Order 2008.

The draft Regulations will address a point that has arisen out of the development of the interpretation of FATF former Recommendation 26 by MONEYVAL. R.26 and deals with the FIU. The relevant requirement of R.26 is listed below –

“The FIU either directly or through another competent authority, should be authorised to obtain from reporting parties additional information needed to properly undertake its functions.”

The functions of the FIU are outlined in R.26.1, where it states –

“Countries should establish an FIU that serves as a national centre for receiving (and if permitted, requesting), analysing, and disseminating disclosures of STR and other relevant information concerning suspected ML or FT activities.”

It has become apparent from recent MONEYVAL plenaries that criterion 26.4 of former FATF R.26 is understood to mean that the FIU have the power to obtain

information generally from all entities that are subject to an obligation to report suspicions (rather than to obtain additional information from just those entities that have actually made a particular report). For the avoidance of doubt, it is considered that this represents a development of MONEYVAL policy.

The current position in Jersey is that under Article 21 of the Money Laundering (Jersey) Order 2008 (“MLO”), if the FIU require further information from someone who has made a suspicious activity report (“SAR”), they are able to require additional information that may reasonably be requested from that person under Article 21(4) of the MLO. Therefore, whilst the FIU currently has the power to obtain additional information from a specific relevant person making a SAR, they do not have the ability to obtain information from all relevant entities that are subject to an obligation to report suspicions.

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (“the Warsaw Convention”), is a Convention that jurisdictions are encouraged by the Financial Action Task Force to ratify. Article 12(2) of the Warsaw Convention provides that: *“Each Party shall adopt such legislative and other measures as may be necessary to ensure that its FIU has access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports.”*. Therefore, adoption of the draft Regulations will enable Jersey to comply with Article 12 of the Warsaw Convention and formally request, in due course, the extension of the Warsaw Convention.

Financial and manpower implications

There are no resource implications for the States arising from the adoption of the draft Regulations.

Explanatory Note

These Regulations would establish a financial intelligence unit (“FIU”) for Jersey, to carry out the functions of such a unit as described in Article 41B of the Proceeds of Crime (Jersey) Law 1999 (as inserted by the Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201-), in accordance with the general purpose stated in *Regulation 2* (which also designates the Joint Financial Crimes Unit of the States of Jersey police force as the FIU). *Regulation 3* sets out the circumstances in which the FIU could seek information from a relevant person (as defined in the interpretation provision in *Regulation 1*). A request for information would be lawfully made only if it meets the criteria set out in *Regulation 4* and also relates to a kind of information described in that Regulation.

Regulation 5 would create an offence of failure to respond to such a request and provides that the penalty for the offence would be a fine of an unlimited amount or, in the case of a natural person, imprisonment for up to 2 years and a fine.

Regulation 6 would make consequential amendments to the Money Laundering (Jersey) Order 2008.

Regulation 7 provides for the citation of these Regulations and that they will come into force following the commencement of the Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201-.



Jersey

DRAFT PROCEEDS OF CRIME (FINANCIAL INTELLIGENCE) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Interpretation	9
2	Financial Intelligence Unit: designation and general purpose	9
3	Gathering financial information	10
4	Criteria for making request	10
5	Offence and penalty etc.....	11
6	Amendment of the Money Laundering (Jersey) Order 2008	12
7	Citation and commencement.....	13



Jersey

DRAFT PROCEEDS OF CRIME (FINANCIAL INTELLIGENCE) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 41B and 42A of the Proceeds of Crime (Jersey) Law 1999¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“FIU” means the body designated under Regulation 2 as the financial intelligence unit;

“principal Law” means the Proceeds of Crime (Jersey) Law 1999²;

“relevant person” means –

- (a) a person carrying on a financial services business in or from within Jersey; or
- (b) either –
 - (i) a Jersey body corporate, or
 - (ii) other legal person registered in Jersey,carrying on a financial services business in any part of the world;

“suspicious activity report” has the same meaning as given by Regulation 1(1) of the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014³.

2 Financial Intelligence Unit: designation and general purpose

- (1) The Joint Financial Crimes Unit of the States of Jersey police force shall be the financial intelligence unit (“FIU”) in Jersey and shall carry out the functions of such a unit as defined by Article 41B(1) of the principal Law.
- (2) In carrying out such functions –
 - (a) the FIU must have regard to its general purpose of combating money laundering and the financing of terrorism;

- (b) the FIU must at all times act in accordance with the provisions of these Regulations and of the principal Law; and
- (c) in any case where there is a conflict between those provisions and the provisions of any other enactment, the provisions of these Regulations and of the principal Law shall prevail.

3 Gathering financial information

- (1) This Regulation applies where –
 - (a) the FIU receives a report (including, but not limited to, a disclosure or suspicious activity report in accordance with a provision of the principal Law, the Terrorism (Jersey) Law 2002⁴, or any enactment made under those Laws) from a person listed in paragraph (2) (a “reporter”); and
 - (b) the FIU reasonably considers that, for the proper fulfilment of any of its functions, it is necessary or expedient to seek additional information from any relevant person (“T”) who is not the reporter but who –
 - (i) is mentioned in or otherwise identifiable from the report, or
 - (ii) to the reasonable knowledge or belief of the FIU, holds information that is relevant to analysis of the report.
- (2) The persons mentioned in paragraph (1)(a) are –
 - (a) a relevant person;
 - (b) the Commission;
 - (c) a financial intelligence unit outside Jersey,
 - (d) the Comptroller of Taxes within the meaning of Article 6 of the Income Tax (Jersey) Law 1961⁵ or any officer appointed under Article 8 of that Law;
 - (e) a police officer; and
 - (f) an administrative or law enforcement agency (other than the States of Jersey Police Force) concerned with combating money laundering and the financing of terrorism.
- (3) Where this Regulation applies the FIU may make a request to T, in accordance with the criteria in Regulation 4, for the provision of additional information.
- (4) Upon receipt of a request duly made, T must provide the additional information in such form and by such date or within such reasonable period as the FIU may require.

4 Criteria for making request

- (1) A request is duly made for the purposes of Regulation 3 if –
 - (a) it is made reasonably;
 - (b) it relates to information falling within a category described in paragraph (2);
 - (c) it specifies the nature of the information sought;

-
- (d) it specifies a reasonable date by which, or period within which, the information must be provided; and
 - (e) it is made in writing.
- (2) The categories of information which may lawfully be sought are –
- (a) information which may be obtained as a result of the application of customer due diligence measures, as defined in Article 3 of the Money Laundering (Jersey) Order 2008⁶, by a relevant person;
 - (b) information in relation to which record-keeping requirements under Part 4 of the Money Laundering (Jersey) Order 2008, or reporting and disclosure requirements under Part 5 of that Order, are imposed on a relevant person;
 - (c) any other information which is necessary to determine whether a person is a holder or beneficial owner of one or more accounts of whatever nature;
 - (d) the particulars of specified accounts, or of operations which have been carried out during a specified period.

5 Offence and penalty etc.

- (1) A person failing to comply with the obligation imposed by Regulation 3(4) is guilty of an offence.
- (2) It is a defence for a person who is charged with an offence under sub-paragraph (1) to prove –
 - (a) that the information requested was not within the person's possession; or
 - (b) that it was not reasonably practicable for the person to comply with the request.
- (3) A person guilty of an offence under sub-paragraph (1) shall be liable to a fine or if the person is a natural person, to imprisonment for a term not exceeding 2 years or a fine or to both.
- (4) Where an offence committed by an entity listed in paragraph (5) is proved to have been committed with the consent or connivance of any person specified in the case of that entity in paragraph (6), the person shall also be guilty of the offence and liable in the same manner as the entity to the penalty provided for that offence.
- (5) The entities mentioned in paragraph (4) are –
 - (a) a limited liability partnership;
 - (b) a separate limited partnership;
 - (c) an incorporated limited partnership or other body corporate.
- (6) The persons to whom liability for an offence may attach in accordance with paragraph (4) are –
 - (a) in the case of a limited liability partnership, a person who is a partner of the partnership;
 - (b) in the case of a separate limited partnership or an incorporated limited partnership –

-
- (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (c) in the case of a body corporate other than an incorporated limited partnership, a director, manager, secretary or other similar officer of the body corporate; or
 - (d) any person purporting to act in any capacity described in sub-paragraphs (a) to (c).
- (7) Where the affairs of a body corporate are managed by its members, paragraphs (4) to (6) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (8) Information provided by T under these Regulations shall not be admissible in evidence in criminal proceedings against T or any of T's employees, except in proceedings in relation to an offence under this Regulation.

6 Amendment of the Money Laundering (Jersey) Order 2008

- (1) In Article 1(1) of the Money Laundering (Jersey) Order 2008⁷ ("MLO"), after the definition "FATF Recommendations" there shall be inserted the following definition –
- “ ‘Financial Intelligence Unit’ has the meaning given by the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 201-⁸”.
- (2) In Article 19(4) of the MLO, for the words “Commission, police officer or customs officer” there shall be substituted the words “Commission, the Financial Intelligence Unit, a police officer or customs officer”.
- (3) In Article 21(2) of the MLO, for the words “to a designated police officer or designated customs officer” there shall be substituted the words “to the Financial Intelligence Unit, a designated police officer or a designated customs officer”.
- (4) In Article 23 of the MLO –
- (a) in paragraphs (1), (2), (5A) and (5B), for the words “to a designated police officer or designated customs officer” there shall be substituted the words “to the Financial Intelligence Unit, a designated police officer or a designated customs officer”;
 - (b) in paragraph (5), for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs –
 - “(a) the Financial Intelligence Unit;
 - (b) a designated police officer or designated customs officer; and
 - (c) the Commission.”;
 - (c) in paragraph (5E), for sub-paragraph (b) there shall be substituted the following sub-paragraphs –
 - “(b) the Financial Intelligence Unit; and

(c) a designated police officer or designated customs officer.”.

7 Citation and commencement

These Regulations may be cited as the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 201- and shall come into force immediately following the commencement of the Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201-⁹.

-
- 1 *chapter 08.780*
 - 2 *chapter 08.780*
 - 3 *R&O.101/2014*
 - 4 *chapter 17.860*
 - 5 *chapter 24.750*
 - 6 *chapter 08.780.30*
 - 7 *chapter 08.780.30*
 - 8 *P.6/2015*
 - 9 *Law currently awaiting Privy Council sanction*