

STATES OF JERSEY



DRAFT COMMUNITY PROVISIONS (WIRE TRANSFERS) (AMENDMENT) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 15th November 2007
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

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REPORT

The amending Regulations will complete the implementation – in Jersey – of Financial Action Task Force (“**FATF**”) Special Recommendation VII on wire transfers (“**SR VII**”), one of 9 Special Recommendations issued by the FATF to provide a basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. The amending Regulations will do this by introducing oversight provisions into the Community Provisions (Wire Transfers) (Jersey) Regulations 2007 (“**principal Regulations**”) and specifying which contraventions of the principal Regulations will constitute offences.

The principal Regulations – which came into force on 23rd July 2007 – already establish requirements for information to accompany transfers. Obligations are placed on –

- the payment service provider of the customer requesting that a transfer be made;
- the payment service provider of the person that is to receive the transfer; and
- on any intermediate payment service providers (such as correspondent banks).

These requirements are unaffected by the amending Regulations, save for 2 additional references to the Order that will succeed the Money Laundering (Jersey) Order 1999, and which is expected will come into force in January 2008.

As they stand, however, the principal Regulations do not include any provision for oversight of compliance. Nor do they specify which contraventions will constitute offences. This is because, at the time that the principal Regulations were approved by the States, the approach to be followed in the United Kingdom (“**UK**”) in these areas had not been finalised, and has only very recently been agreed.

It is important that the Island should implement SR VII in a way that is equivalent to the European Union (“**EU**”) and, in particular, the UK. This is because one of the conditions for individuals and businesses in Jersey to be able to continue to use UK payment systems, in the same way that individuals and businesses in the UK do (i.e. as domestic transfers), is that Jersey implements the “same rules” on transfers that apply in the EU. Where provisions in Jersey for oversight and sanctions follow those of the UK, then it will be much easier to demonstrate that “same rules” are applied.

The UK has already made an application to the European Commission (“**EC**”) in respect of Jersey (and the other Crown Dependencies) to allow transfers between the UK and Jersey to be treated as domestic transfers, but it is unlikely that this application will be determined until such time as the amending Regulations are brought into force. The EC may approve the UK’s application only if it is satisfied that Jersey payment service providers are required to apply the “same rules” as those established in equivalent EU legislation.

Financial/ manpower implications

The amending Regulations are not expected to have any material impact on the financial or manpower resources of the States, given that –

- requirements contained in the principal Regulations will be “self-policed” – on the basis that outgoing wire transfers that do not include complete information will likely be rejected by the payment service provider of the beneficiary of the transfer;
- the Jersey Financial Services Commission will have responsibility for monitoring compliance with the Regulations; and

- regulatory sanctions will also be available for use under the Financial Services (Jersey) Law 1998 – since payment service providers must be registered with or known to the Commission.

Whilst the principal Regulations provide that the omission of complete information in a transfer must be a factor in assessing whether or not another person is engaged in money laundering or terrorist financing, this is a factor that will be taken into account by a payment service provider in reporting obligations that are already established, or due to be established, under other enactments.

The availability of complete information in each wire transfer is likely to assist law enforcement.

Explanatory Note

These Regulations amend the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

Regulation 1 is an interpretative provision, which states that references in these Regulations to the principal Regulations are references to the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

Regulations 2 and 3 amend cross-references to the Money Laundering (Jersey) Order 1999, to make provision for future amendments to that Order.

Regulation 4 inserts enforcement provisions into the principal Regulations. The provisions specify which contraventions of the Regulations shall constitute offences, and apply certain investigative provisions of the Financial Services (Jersey) Law 1998 to payment service providers.

Regulation 5 specifies the name by which these amending Regulations may be cited and that they shall come into force 7 days after they are made.



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Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Regulation 5 amended</u>
<u>3</u>	<u>Regulation 6 amended</u>
<u>4</u>	<u>Regulations 14A to 14D inserted</u>
<u>5</u>	<u>Citation and commencement</u>



Jersey

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996^[1] and having regard to Regulation EC No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, have made the following Regulations –

1 Interpretation

In these Regulations, “principal Regulations” means the Community Provisions (Wire Transfers) (Jersey) Regulations 2007^[2].

2 Regulation 5 amended

In Regulation 5(5)(b)(iii) of the principal Regulations, after the words “Money Laundering Order” there shall be inserted the words “or an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999^[3] in substitution for that Order”.

3 Regulation 6 amended

In Regulation 6(3) of the principal Regulations, after the words “Money Laundering Order, if any,” there shall be inserted the words “or the requirements, or any provisions, relating to the information that a payment service provider shall obtain and have verified in respect of customers, in an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999 in substitution for that Order”.

4 Regulations 14A to 14D inserted

In the principal Regulations, after Regulation 14, there shall be inserted the following cross heading and Regulations –

“Regulatory and enforcement powers

14A Supervision

The Jersey Financial Services Commission shall –

- (a) effectively monitor payment service providers; and

- (b) take the necessary measures for the purpose of securing the compliance by payment service providers with the requirements of these Regulations.

14B Monitoring and enforcement powers of Commission

- (1) The Jersey Financial Services Commission may serve a notice in writing on –
 - (a) a person who is or was a payment service provider;
 - (b) a person who is or was a principal person in relation to a payment service provider;
 - (c) a person who is or was an associate of a principal person in relation to a payment service provider; or
 - (d) a person who appears to the Commission to be in possession of information or documents of the kind mentioned in paragraph (2).
- (2) A notice under paragraph (1) may require the person on whom it is served to, at the place and time specified in the notice –
 - (a) provide the Jersey Financial Services Commission with information or documents, of the kind specified in the notice, that the Commission may reasonably require the person to provide for the purpose of effectively monitoring or ensuring compliance with the requirements of these Regulations; or
 - (b) answer questions, put to the person by the Jersey Financial Services Commission or a duly authorized officer or agent of the Commission, that the Jersey Financial Services Commission may reasonably require the person to answer for the purpose of effectively monitoring or ensuring compliance with the requirements of these Regulations.
- (3) The Jersey Financial Services Commission may appoint one or more competent persons to investigate and report to the Commission as to whether a payment service provider has complied with these Regulations.
- (4) Article 32(3), (4) and (6) to (11) of the Financial Services Law, as modified by paragraph (7), shall apply to a notice under paragraphs (1) and (2) of this Regulation as if it were a notice under paragraph (1) of that Article.
- (5) Article 33(2) to (12) of the Financial Services Law, as modified by paragraph (7), shall apply to an appointment under paragraph (3) of this Regulation as if it were an appointment under paragraph (1) of that Article.
- (6) The following provisions of the Financial Services Law, as modified by paragraph (7) shall also apply for the purposes of these Regulations –
 - (a) Article 28 (except paragraph (2));
 - (b) Article 34 (except paragraph (1)(a) and (f));
 - (c) Article 35;
 - (d) Article 36 (except paragraphs (1)(a) to (c), (6)(a) and (7));
 - (e) Articles 37 to 41.
- (7) In the provisions of the Financial Services Law applied by paragraphs (4) to (6)–
 - (a) a reference to a registered person shall be construed as a reference to a payment service provider;
 - (b) a reference to a notice under Article 32(1), to questions put under sub-paragraph (b) thereof or to information or documents required under that Article shall be construed, respectively, as a reference to a notice, to questions put or to information or documents required, under paragraphs (1) and (2) of this Regulation;

- (c) a reference to an appointment, or person appointed, under Article 33(1) or to an investigation under that Article shall be construed respectively as a reference to an appointment, or person appointed, or to an investigation, under paragraph (3) of this Regulation;
 - (d) a reference to information and requirements under the Law shall be construed as a reference to information and requirements under these Regulations;
 - (e) a reference to the functions of the Jersey Financial Services Commission under the Law shall be construed as a reference to the functions of the Commission under these Regulations;
 - (f) a reference to an offence under the Law shall be construed as a reference to an offence under the provisions of the Law as they are applied by this Regulation and shall include a reference to an offence under these Regulations;
 - (g) a reference to a notice required to be given to the Commission shall be construed as including a report required to be given under these Regulations.
- (8) A reference in any other enactment (including the Financial Services Law) to a provision of the Financial Services Law that is applied by this Regulation shall be taken to include a reference to that provision as so applied.
- (9) In this Regulation –
- ‘associate’, in relation to a payment service provider, has the same meaning as it has in the Financial Services Law in relation to a registered person;
 - ‘Financial Services Law’ means the Financial Services (Jersey) Law 1998;
 - ‘principal person’, in relation to a payment service provider, has the same meaning as it has in the Financial Services Law in relation to a registered person.

14C Offences

- (1) A payment service provider of the payer who fails to comply with any requirements of –
 - (a) Regulation 6(1) (read with Regulations 7(1) and (2) and 8);
 - (b) Regulation 6(2) (read with Regulations 6(3) or 6(4), as the case requires);
 - (c) Regulation 6(5); or
 - (d) Regulation 7(2),
 shall be guilty of an offence.
- (2) A payment service provider of the payee who fails to comply with any requirements of –
 - (a) Regulation 9;
 - (b) Regulation 10(1) (read with Regulation 10(2)); or
 - (c) Regulations 10(3) or 12,
 shall be guilty of an offence.
- (3) An intermediary payment service provider who fails to comply with any requirements of –
 - (a) Regulation 13;
 - (b) Regulation 14(3) (read with Regulation 14(4)); or
 - (c) Regulation 14(5) or (6),
 shall be guilty of an offence.
- (4) In deciding whether a person has committed an offence under this Regulation, the court shall take into account whether the person followed any relevant guidance that applies to

the person and which was at the time issued, adopted or approved by the Jersey Financial Services Commission.

- (5) A person shall not be guilty of an offence under this Regulation if he or she took all reasonable steps, and exercised all due diligence, to avoid committing the offence.

14D Penalty for offences

- (1) A person who commits an offence under Regulation 11(2) shall be liable to imprisonment for 5 years and a fine.
- (2) A person who commits an offence under Regulation 14C shall be liable to imprisonment for 2 years and a fine.”.

5 Citation and commencement

- (1) These Regulations may be cited as the Community Provisions (Wire Transfers) (Amendment) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force 7 days after they are made.

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- [1] *chapter 17.245*
- [2] *R&O.88/2007*
- [3] *chapter 08.780*