

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME (AMENDMENT NO. 7) (JERSEY) LAW 202- (P.51/2022): COMMENTS

**Presented to the States on 20th April 2022
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

The Economic and International Affairs Panel (the Panel) has, during the course of its role in Scrutiny, received regular briefings from the Minister and the Financial Services Team on upcoming changes to existing legislation. Some of these changes form part of the global standards required by the Financial Action Task Force (FATF) and, the implementation of this legislation is key to the upcoming assessment of Jersey's Financial Services, due to take place in 2023 by MONEYVAL.

The Amendment

This particular Amendment is classed within the Failure to Prevent (FTP) group of standards whereby jurisdictions are required to demonstrate that money laundering offences and activities are investigated, and offenders are prosecuted and subject to effective, proportionate, and dissuasive sanctions. Jersey is a well-regulated international finance centre and is committed to combatting financial crime and illicit finance. At the core of these efforts are the existing Anti-Money Laundering (AML) and Countering Financial Terrorism (CFT) regulations. The purpose of the Amendment is to enhance Jersey's overall AML/CFT effectiveness.

Government's broader policy proposal to enhance the AML/CFT enforcement effectiveness, is based on the following three building-blocks:

- Extend the civil financial penalties regime available to the Jersey Financial Services Commission (JFSC)
- Introduce a bespoke Deferred Prosecution Agreement (DPA) regime
- Introduce a Failure-To-Prevent Money Laundering/Terrorist Financing offence (FTP ML/TF).

The combination of these three building-blocks will significantly enhance Jersey's overall AML/CFT enforcement effectiveness. The first of these has already been implemented by the adoption of the draft Financial Services Commission (Amendment No.8) (Jersey) law 202- on 19th January 2022. As regards the second, the work is ongoing and it is understood that it is intended to bring a draft law before the States assembly later in 2020. The third building block is contained within the Draft Proceeds of Crime (Amendment No. 7) (Jersey) Law 202- (the Draft Amendment) the subject of this paper and, if adopted, would create a failure-to-prevent ML and TF corporate criminal offence within the Proceeds of Crime (Jersey) Law 1999 (POCL).

The Core Issues

There are a number of Core Issues which will be considered when determining the outcome of offences, with particular reference given to the following:

- To what extent are the types of ML activity being investigated and prosecuted consistent with the country's threats and risk profile and national AML/CFT policies?
- To what extent are the sanctions applied against natural or legal persons convicted of ML offences effective, proportionate, and dissuasive?

- To what extent do countries apply other criminal justice measures in cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction?

The points to particularly highlight are, firstly, the requirement to demonstrate prosecutions which are consistent with Jersey's money laundering risk profile and, secondly, to apply effective and dissuasive sanctions against natural persons as well as legal persons.

Individual Responsibility

The Panel raised concern that junior members of staff may fall foul of the new regulations and be held liable for something that may not necessarily be within their remit. However, on further discussion, it was informed that this is a corporate offence, i.e. it is aimed predominantly at legal entities but only those which carry out financial services business under the Proceeds of Crime (Jersey) Law 1999. Individuals would only come into scope where an individual itself acts as a financial services business under the Proceeds of Crime Law, for example an accountant acting as a sole trader. The offence enables a more appropriate attribution of criminal liability to a legal person where money laundering has been proven to the criminal standard and the legal entity failed to prevent said money laundering on the balance of probabilities. The Panel found this information reassuring and is content that the regulations are robust enough to protect individuals from unnecessary prosecution.

Offences and Financial Penalties

The Panel asked how the offences would be applied and was informed that there are two possible scenarios:

- The first and probably most common case is where the money launderer cannot be prosecuted in Jersey due to being based in another jurisdiction and an extradition cannot be secured. However, if there is a local financial services business which failed to prevent the money laundering, this legal entity could then be prosecuted under the new offence.
- In the second scenario, the money launderer might be prosecuted in Jersey and, if the money laundering was facilitated by a local Financial Service Businesses (FSB), such business might then be charged in addition to the actual launderer.

The Panel learned that there is no limit for the financial penalty and it would be down to the Royal Court to decide on the amount depending on the merits of each case. It was informed that this system is that which already exists for all other money laundering offences and has not changed. The Panel also learned that the penalty for breaches relating to money laundering carry a two-year imprisonment with actual money laundering offences carrying a much longer imprisonment of up to fourteen years. The Panel is satisfied that the Royal Court will remain the key arbitrator in money laundering offences and believes the imprisonment terms are adequate.

Changes to AML Policies and Procedures for Financial Services Businesses

The Panel was pleased to note that there is no requirement for local Financial Service Businesses to revamp or revise their existing AML policies and procedures as the requirements already exist with FSB's already required to comply. This offence just

increases their potential criminal liability if they fail to comply with existing requirements.

Conclusion

Following the briefings received from the Minister and his team and the follow up to Panel concerns, the Panel is supportive of this Amendment and believes it will go towards reinforcing the already robust AML/CFT regulations that are in place. The Panel heard that the UK is intending to bring a second part of the Economic Crime Bill to the Commons in Q2 of 2022 which might contain further provisions to fight economic crime and might include “failure to prevent” offences. In this sense, Jersey is ahead of the UK with its regime changes.