

# **STATES OF JERSEY**

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## **DRAFT COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 200-**

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

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**STATES GREFFE**





Jersey

## **DRAFT COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 200-**

### **REPORT**

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The draft Regulations implement – in Jersey – Financial Action Task Force (“FATF”) Special Recommendation VII on wire transfers (“SR VII”), one of nine Recommendations issued by the FATF to provide a basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

SR VII has been developed with the objective of preventing terrorists and other criminals from having unfettered access to payments that are made electronically (“wire transfers”) for moving their funds and for detecting such misuse when it occurs.

The draft Regulations establish requirements for information to accompany transfers. Obligations are placed on the payment service provider of the customer requesting that a transfer be made (referred to as the “payer”), the payment service provider of the person that is to receive the transfer (referred to as the “payee”) and on any intermediate payment service providers (such as correspondent banks).

As well as implementing international standards in Jersey, the draft Regulations will allow individuals and businesses in Jersey to continue to use United Kingdom (“UK”) payment systems, in the same way that individuals and businesses in the UK are able to. One of the conditions for such use is that Jersey implements the “same rules” on transfers that apply in the European Union (“EU”).

The EU has already issued a Regulation implementing SR VII – Regulation (EC) No. 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds (“EU Payments Regulation”) – which has had direct effect in EU Member States since 1st January 2007. Whilst the EU Payments Regulation permits Member States to treat transfers both within and between Member States as domestic transfers, transfers made between a Member State and any other jurisdiction, including Jersey, must be treated as cross-border transfers. In the absence of any exemptions, such a requirement would impede the use in Jersey (and the UK) of UK payment systems for making payments between the two jurisdictions. Specifically, it would no longer be possible to transfer funds through standing orders or direct credits using the BACS payment system – as this system is not able to carry all of the information that is required for cross-border transfers.

As a result of this, Article 17(1) of the EU Payments Regulation permits a Member State to apply to the European Commission (“EC”) to be able to treat transfers to and from its dependent territories as if they were wire transfers within that Member State, i.e. domestic transfers. The UK has made an application in respect of each of the Crown Dependencies – so that transfers between the UK and Crown Dependencies may be treated as domestic transfers (but not transfers between other Member States and the Crown Dependencies – which will continue to be treated as cross-border).

The EC may approve the UK’s application in respect of Jersey (and the other Crown Dependencies) only if it is satisfied that Jersey payment service providers are required to apply the “same rules” as those established in the EU Payments Regulation.

The draft Regulations are intended to apply such rules, in order that transfers between Jersey and the UK may continue to be made cheaply and quickly using UK payment systems. Without such rules, the use of BACS for making transfers between Jersey and the UK will be limited.

The draft Regulations will also allow transfers between Jersey and the Bailiwick of Guernsey, and Jersey and the Isle of Man to be made using UK payment systems.

### **Financial/ manpower implications**

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

## Explanatory Note

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*Regulation 1* contains interpretative provisions.

*Regulation 2* contains a definition of “money laundering”.

*Regulation 3* contains a definition of “terrorist financing” and “acts of terrorism”.

*Regulation 4* sets out the meaning of “complete information on the payer”, which is the phrase used to define the information that may be required under the Regulations to be transferred with a transaction.

*Regulation 5* sets out that the Regulations apply to transfers of funds that are sent or received by a payment service provider (a “PSP”) established in Jersey, other than exempt transfers of funds. The Regulation then sets out which transfers of funds are exempt from the Regulations.

*Regulation 6* sets out the requirements in relation to information and record keeping. The PSP of a payer shall ensure that transfers of funds are accompanied by complete information on the payer and shall, before transferring any funds, verify the information, and keep the information for 5 years. The Regulation sets out requirements in relation to verification.

*Regulation 7* specifies that if the PSP of the payer is situated in Jersey and the PSP of the payee is situated in Jersey or the UK, the transfer of funds shall not be required to be accompanied by complete information on the payer, but shall instead only be required to be accompanied by the payer’s account number or a unique identifier allowing the transaction to be traced back to the payer.

However, the PSP of the payer is required to provide the complete information to the PSP of the payee, within 3 working days after a request from the PSP of the payee.

*Regulation 8* specifies that Regulation 6(1) shall not apply in the case of a batch file transfer from a single payer, where some or all of the PSPs of the payee are situated outside Jersey and the UK, if the batch file contains the complete information and the individual transfers bundled together in the batch file carry the account of the payer or a unique identifier.

*Regulation 9* places on the PSP of the payee an obligation to detect that fields within the messaging or payment and settlement system used to effect a transfer of funds have been completed in accordance with the requirements of the system, and to have in place effective procedures to detect that information required is missing or incomplete. For batch file transfers where the PSP of the payer is situated outside Jersey or the UK, complete information on the payer is only required on the batch file and not the individual transfers bundled together with it.

*Regulation 10* sets out the action to be taken when information is missing or incomplete. Firstly, the PSP of the payee shall reject the transfer, ask for the complete information, or take another action that is specified by an Order made by the Minister for Treasury and Resources. Secondly, if there are regular failures to supply such information, the PSP of the payee shall take steps to attempt to ensure compliance, which may include issuing warnings to, or the setting of deadlines for, the PSP of the payer. If, subsequently, there are still regularly failures, the PSP of the payee shall reject any future transfers from, or decide whether or not to restrict or terminate its business with, the PSP of the payer.

*Regulation 11* specifies that missing or incomplete information shall be a factor in a PSP of a payee assessing whether actions are required to be taken by the PSP of the payee under the Drug Trafficking Offences (Jersey) Law 1988, the Money Laundering (Jersey) Order 1999 or the Terrorism (Jersey) Law 2002. The Regulation also creates an offence, in relation to a PSP of a payee or an employee of such a person, of failing to report knowledge or a suspicion that another person is engaged in money laundering or terrorist financing, which knowledge or suspicion arises in whole or in part from the fact that there is missing or incomplete information in relation to a transfer of funds. It is a defence if a person who might otherwise be guilty of such an offence reports to his or her employer, in accordance with the procedures established by the employer, the relevant information or other matter. Paragraph (7) of the regulation protects a lawyer’s professional duty of confidentiality.

*Regulation 12* requires a PSP of a payee to keep information received on a payer for 5 years.

*Regulation 13* places an obligation on an intermediary PSP (that is, a PSP which is neither that of the payer nor the payee, and which participates in the execution of transfers of funds) to ensure that all received information on

the payer that accompanies a transfer of funds is sent with the transfer.

*Regulation 14* applies where the PSP of the payer is situated outside Jersey and the UK and the intermediary PSP is situated in Jersey. Where the Regulation applies, an intermediary PSP may use a system with technical limitations that prevent the information on the payer from accompanying the transfer of funds. However, if, while receiving funds, the intermediary PSP becomes aware that information on the payer required under the Regulations is incomplete, the intermediary must inform the PSP of the payee. It must also provide the information to the PSP of the payee within 3 days after a request is made by the PSP of the payee. All records of an interim PSP which has used a system with such technical limitations shall be kept for 5 years.

*Regulation 15* specifies that powers, under certain specified enactments relating to terrorism, drug trafficking, and the proceeds of crime, that permit a person to require another person to provide information, shall be taken to include a power to require a PSP to provide to the person any information that has accompanied a transfer of funds, and any records, that the PSP is required to keep under these Regulations. Such information may only be used for the purposes of preventing, investigating or detecting money laundering or terrorist financing.

*Regulation 16* specifies that the Chief Officer of the States of Jersey Police Force and the Agent of the Impôts may designate persons for the purposes of the Regulations. If no such person is designated by the Chief Officer or the Agent of the Impôts, the Chief Officer or the Agent, respectively, shall be designated officers for the purposes of the Regulations.

*Regulation 17* specifies the name by which these Regulations may be cited and that they shall come into force 7 days after they are made.





Jersey

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

## Arrangement

### Regulation

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- 6 General requirements regarding information and record keeping
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#### *Obligations of payment service provider of payee*

- 9 Requirement to detect missing or incomplete information
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#### *Obligations of intermediary payment service provider*

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Jersey

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

*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<sup>[1]</sup> 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 –

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### *Interpretative provisions*

#### **1 Interpretation**

In these Regulations –

“act of terrorism” has the meaning assigned by Regulation 3;

“Agent of the Impôts” has the same meaning as in the Customs and Excise (Jersey) Law 1999<sup>[2]</sup>;

“batch file transfer” means several individual transfers of funds which are bundled together for transmission;

“designated officer” means a person who is, for the purposes of these Regulations, designated under Regulation 16(1) or (2) or a designated officer under Regulation 16(3);

“electronic money” means monetary value as represented by a claim on the issuer which is –

- (a) stored on an electronic device;
- (b) issued on receipt of funds of an amount not less in value than the monetary value issued; and
- (c) accepted as means of payment by undertakings other than the issuer;

“intermediary payment service provider” means a payment service provider which is neither that of the payer nor that of the payee and which participates in the execution of transfers of funds;

“Jersey Financial Services Commission” means the Commission established under the Financial Services Commission (Jersey) Law 1998<sup>[3]</sup>;

“money laundering” has the meaning assigned by Regulation 2;

“Money Laundering Order” means the Money Laundering (Jersey) Order 1999<sup>[4]</sup>;

“officer of the Impôts” has the same meaning as in the Customs and Excise (Jersey) Law 1999<sup>[5]</sup>;

“payee” means a person who is the intended final recipient of transferred funds;

“payer” means a person who is an account holder who allows a transfer of funds from an account or,

where there is no account, a person who places an order for a transfer of funds;

“payment service provider” means a person whose business includes the provision of transfer of funds services;

“public notice” means –

- (a) a notice published in the Jersey Gazette; or
- (b) a notice whose contents are brought to the attention of the public by the taking of other reasonable steps for that purpose;

“terrorist financing” has the meaning assigned by Regulation 3;

“transfer of funds” means any transaction carried out on behalf of a payer through a payment service provider by electronic means with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;

“unique identifier” means a combination of letters, numbers or symbols, determined by a payment service provider in accordance with the protocols of the payment and settlement system or messaging system used to effect a transfer of funds by the provider;

“United Kingdom” includes any country or territory (other than Jersey) –

- (a) with which the United Kingdom has an agreement that it has been authorized to conclude under Article 17 of 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; or
- (b) in respect of which transfers of funds between that country or territory and the United Kingdom are provisionally treated as transfers of funds within the United Kingdom pursuant to that Regulation.

## **2 Meaning of “money laundering”**

(1) For the purposes of these Regulations, money laundering means –

- (a) the intentional conversion or transfer of property, knowing that the property is derived from criminal activity or participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of criminal activity to evade the legal consequences of the person’s action;
- (b) the intentional concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from participation in criminal activity;
- (c) the intentional acquisition, possession or use of property, knowing, at the time of receipt, that the property was derived from criminal activity or from participation in criminal activity;
- (d) intentional participation in, association to commit, attempts to commit and aiding, abetting, facilitating or counselling the commission of, any of the actions mentioned in sub-paragraphs (a) to (c),

whether or not the activities that have generated the property to be laundered were carried out in Jersey or any other country or territory.

(2) In this Regulation –

“criminal activity” means any kind of criminal involvement in the commission of a serious crime;

“criminal organization” means a structured association, established over a period of time, of more than 2 persons, acting in concert with a view to committing offences which are punishable by imprisonment or detention for 4 years or more, whether such offences are an end in themselves or a means –

- (a) of obtaining material benefits; and
- (b) where appropriate, of improperly influencing the operation of public authorities;

“drug offence” means an offence under the Misuse of Drugs (Jersey) Law 1978<sup>[6]</sup> or an offence of a similar kind under an enactment of another country or territory;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to or an interest in such assets;

“serious crime” includes –

- (a) any act of terrorism and any act related to an act of terrorism;
- (b) any drug offence;
- (c) the activities of a criminal organization;
- (d) fraud, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities’ Financial Interests signed on 26 July 1995, that is serious fraud within the meaning of the Convention;
- (e) corruption;
- (f) an offence which is punishable by imprisonment or detention for more than 12 months.

### **3 Meaning of “terrorist financing” and “acts of terrorism”**

- (1) For the purposes of these Regulations –

“structured group” means a group that –

- (a) is not randomly formed for the immediate commission of an offence; and
- (b) has formally defined roles for its members, continuity of its membership or a developed structure;

“terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to carry out an act of terrorism or acts related to an act of terrorism;

“terrorist group” means a structured group of more than 2 persons, established over a period of time and acting in concert to commit terrorist offences.

- (2) For the purposes of these Regulations, any of the following acts is an act of terrorism, where the act is committed with any of the relevant aims –

- (a) an attack upon a person’s life which may cause death;
- (b) an attack upon the physical integrity of a person;
- (c) kidnapping or hostage taking;
- (d) causing extensive destruction to –
  - (i) a government or public facility,
  - (ii) a transport system,
  - (iii) an infrastructure facility, including an information system,
  - (iv) a fixed platform located on the continental shelf, or
  - (v) a public place or private property,likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;

- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
  - (i) threatening to commit any of the acts listed in sub-paragraphs (a) to (h);
  - (j) inciting, aiding or abetting any of the acts listed in sub-paragraphs (a) to (i);
  - (k) attempting to commit any of the acts listed in sub-paragraphs (a) to (h), other than an act of possession referred to in sub-paragraph (2)(f).
- (3) The relevant aims are –
- (a) the aim of seriously intimidating a population;
  - (b) the aim of unduly compelling a government or international organization to perform or abstain from performing an act;
  - (c) the aim of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.
- (4) For the purposes of these Regulations, any of the following shall be an act related to an act of terrorism –
- (a) directing a terrorist group;
  - (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group;
  - (c) theft, or extortion, with a view to committing a terrorist act;
  - (d) drawing up false administrative documents with a view to committing an act specified in sub-paragraph (b) or paragraph (2)(a) to (h);
  - (e) inciting, aiding or abetting an act referred to in sub-paragraphs (a) to (d);
  - (f) attempting to commit an act referred to in sub-paragraph (c) or (d).

#### **4 What constitutes complete information on the payer**

For the purposes of these Regulations, a reference to complete information on the payer is a reference to the payer's name, address and account number, except that –

- (a) the payer's address may be substituted with the payer's date and place of birth, customer identification number or national identity number;
- (b) if the account number of the payer does not exist, the payer's payment service provider shall substitute it by a unique identifier, which allows the transaction to be traced back to the payer.

#### **5 Application of Regulations**

- (1) These Regulations shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider established in Jersey.
- (2) Despite paragraph (1), these Regulations shall not apply to transfers of funds that are exempt.
- (3) A transfer of funds is exempt when it is carried out using a credit or debit card, if –
  - (a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services; and
  - (b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds.
- (4) A transfer of funds is exempt if –
  - (a) the transfer is carried out using electronic money;
  - (b) the amount transacted is EUR 1,000 or less; and

- (c) where the device on which the electronic money is stored –
  - (i) cannot be recharged, the maximum amount stored in the device is no more than EUR 150, or
  - (ii) can be recharged, a limit of EUR 2,500 is imposed on the total amount transacted in a calendar year, except if an amount of EUR 1,000 or more is redeemed in that same calendar year by the bearer of the device.
- (5) Without prejudice to paragraph (4), a transfer of funds is exempt if it is carried out by means of a mobile telephone or any other digital or information technology device, if –
  - (a) the transfer is pre-paid and does not exceed EUR 150; or
  - (b) the transfer is post-paid and the following conditions are met –
    - (i) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services,
    - (ii) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds,
    - (iii) the payment service provider of the payee is subject to the requirements of Article 2(1) of the Money Laundering Order, Article 40 of the Drug Trafficking Offences (Jersey) Law 1988<sup>[7]</sup> and Article 23 of the Terrorism (Jersey) Law 2002<sup>[8]</sup> or a provision, of an enactment of the United Kingdom, that imposes a similar requirement.
- (6) A transfer of funds is exempt if –
  - (a) the payer withdraws cash from the payer’s own account;
  - (b) there is a debit transfer authorization between 2 parties permitting payments between them through accounts, provided a unique identifier accompanies the transfer of funds to enable the transaction to be traced back;
  - (c) it is made using cheques that have been truncated;
  - (d) it is a transfer to public authorities for taxes, fines or levies within Jersey or the United Kingdom; or
  - (e) both the payer and the payee are payment service providers acting on their own behalf.

*Obligations of payment service provider of payer*

**6 General requirements regarding information and record keeping**

- (1) The payment service provider of the payer shall ensure that transfers of funds are accompanied by the complete information on the payer.
- (2) The payment service provider of the payer shall, before transferring funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source.
- (3) In the case of a transfer from an account, the complete information on a payer shall be deemed to have been verified if the payment service provider of the payer has complied with the requirements of Article 2(1) of the Money Laundering Order, if any, that apply in relation to the payer.
- (4) In the case of a transfer of funds not made from an account, the complete information on the payer shall be deemed to have been verified by a payment service provider of the payer if –
  - (a) the transfer consists of a transaction of an amount of EUR 1,000 or less;
  - (b) the transfer is not a transaction that is carried out in several operations that appear to be linked and that together comprise an amount of more than EUR 1,000; and
  - (c) the payment service provider of the payer does not suspect that the payer is engaged in money laundering or terrorist financing.

- (5) The payment service provider of the payer shall keep for 5 years records of complete information on the payer that accompanies a transfer of funds.

## **7 Exception for transfers of funds within Jersey or to or from the United Kingdom**

- (1) Despite Regulation 6(1), if the payment service provider of the payer is situated in Jersey and the payment service provider of the payee is situated in Jersey or the United Kingdom, the transfer of funds shall only be required to be accompanied by –
  - (a) the payer's account number; or
  - (b) a unique identifier allowing the transaction to be traced back to the payer.
- (2) However, if the payment service provider of the payee so requests, the payment service provider of the payer shall, within 3 working days after the day on which the provider receives the request, make the complete information on the payer available to the payment service provider of the payee.

## **8 Exception for batch transfers to payees outside Jersey or the United Kingdom**

Regulation 6(1) shall not apply in the case of a batch file transfer from a single payer, where some or all of the payment service providers of the payees are situated outside Jersey and the United Kingdom, if –

- (a) the batch file contains the complete information on the payer; and
- (b) the individual transfers bundled together in the batch file carry the account number of the payer or a unique identifier.

### *Obligations of payment service provider of payee*

## **9 Requirement to detect missing or incomplete information**

- (1) The payment service provider of the payee shall detect that fields within the messaging or payment and settlement system used to effect the transfer in respect of the information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that messaging or payment and settlement system.
- (2) The payment service provider of the payee shall have effective procedures in place in order to detect –
  - (a) in respect of transfers of funds where the payment service provider of the payer is situated in Jersey or the United Kingdom – that the information required by Regulation 7 is missing;
  - (b) in respect of transfers of funds where the payment service provider of the payer is situated outside Jersey or the United Kingdom – that there is not complete information on the payer.
- (3) Despite paragraph (2), in the case of batch file transfers where the payment service provider of the payer is situated outside Jersey or the United Kingdom, complete information on the payer is required only in the batch file and not in the individual transfers bundled together in it.

## **10 Action where information missing or incomplete**

- (1) If the payment service provider of the payee becomes aware that information on the payer required by these Regulations is missing or incomplete when receiving transfers of funds, the payment service provider of the payee shall –
  - (a) reject the transfer;
  - (b) ask for the complete information on the payer; or
  - (c) take another action that is specified to be required for the purposes of this Regulation by an

Order made by the Minister for Treasury and Resources.

- (2) However, a person is not required to comply with paragraph (1) if to do so would contravene any other provision of an enactment.
- (3) If the payment service provider of a payer regularly fails to supply the information on the payer required by these Regulations, the payment service provider of the payee shall report that fact to a designated officer and the Jersey Financial Services Commission.
- (4) If the payment service provider of a payer regularly fails to supply the information on the payer required by these Regulations, the payment service provider of the payee shall take steps to attempt to ensure that the payment service provider of the payer complies with the requirements as to supply of information set out in these Regulations, which steps may include –
  - (a) issuing warnings to the payment service provider of the payer; and
  - (b) setting deadlines for the payment service provider of the payer to comply with the requirements as to supply of information set out in these Regulations.
- (5) If after the payment service provider of the payee has taken steps under paragraph (4) in relation to a payment service provider of the payer, the requirements as to supply of information set out in these Regulations are still not regularly complied with by the payment service provider of the payer, the payment service provider of the payee shall either –
  - (a) reject any future transfers of funds from that payment service provider; or
  - (b) decide whether or not to restrict or terminate its business relationship with that provider, either with respect to transfer of funds services or with respect to any mutual supply of services.

## **11 Requirement to report in certain circumstances where missing or incomplete information makes transaction suspicious**

- (1) Missing or incomplete information shall be a factor in the assessment of a payment service provider of the payee as to whether a transfer of funds, or any related transaction, is –
  - (a) for the purposes of Article 40 of the Drug Trafficking Offences (Jersey) Law 1988, to be regarded as suspicious and whether accordingly a disclosure is required to be made under that Article;
  - (b) for the purposes of Article 9 of the Money Laundering Order, to be regarded as suspicious and whether accordingly a report is required to be made in accordance with internal reporting procedures that are required under that Article; and
  - (c) for the purposes of Article 23 of the Terrorism (Jersey) Law 2002, to be regarded as suspicious and whether accordingly a disclosure is required to be made under that Article.
- (2) A person shall be guilty of an offence if –
  - (a) the person is a payment service provider of a payee or is in the employment of a payment service provider of a payee;
  - (b) there is missing or incomplete information on the payer in relation to a transfer of funds;
  - (c) in whole or in part because of the information being missing or incomplete information being provided –
    - (i) the person knows, or suspects, that a person is engaged in money laundering or terrorist financing, or
    - (ii) there are reasonable grounds for the person to suspect that a person is engaged in money laundering or terrorist financing; and
  - (d) the person fails to report his or her knowledge or suspicion, or the grounds for suspicion, to a designated officer, as soon as practicable after the person had the knowledge, suspicion or reasonable grounds for suspicion.
- (3) It is a defence to a charge of committing an offence under paragraph (2) that the person had a



reasonable excuse for not reporting to a designated officer the person's knowledge or suspicion or the grounds for suspicion.

- (4) Where a person, under paragraph (2), discloses to a designated officer –
  - (a) the person's knowledge or suspicion, or the grounds for suspicion, that another person is engaged in money laundering or terrorist financing; or
  - (b) any information or other matter on which that knowledge or suspicion, or the grounds for suspicion, are based,the disclosure shall not be treated as a breach of any restriction imposed by enactment, contract or otherwise.
- (5) Without prejudice to paragraph (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this Regulation that the person disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures.
- (6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by enactment, contract or otherwise.
- (7) Paragraph (2) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him or her in privileged circumstances.
- (8) For the purposes of this Regulation, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to the legal adviser –
  - (a) by, or by a representative of, a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person –
    - (i) in contemplation of, or in connection with, legal proceedings, and
    - (ii) for the purpose of those proceedings.
- (9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

## **12 Record-keeping by payment service provider of the payee**

The payment service provider of the payee shall keep for 5 years records of any information received on the payer.

### *Obligations of intermediary payment service provider*

## **13 Intermediary payment service provider to send information with transfer**

An intermediary payment service provider shall ensure that all received information on the payer that accompanies a transfer of funds is sent with the transfer.

## **14 Duties of intermediary payment service provider in case of technical limitations**

- (1) This Regulation applies where the payment service provider of the payer is situated outside Jersey and the United Kingdom and the intermediary payment service provider is situated within Jersey.
- (2) If this Regulation applies, an intermediary payment service provider may use to send a transfer to the payment service provider of the payee a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds.

- (3) However, if, when receiving a transfer of funds, the intermediary payment service provider becomes aware that information on the payer required under these Regulations is incomplete, the provider may only use a payment system with technical limitations if the condition in paragraph (4) is complied with.
- (4) The condition is that the intermediary payment service provider (either through a payment or messaging system, or through another procedure, that is accepted or agreed between both the intermediary payment service provider and the payment service provider of the payee) informs the payment service provider of the payee that the information is incomplete.
- (5) An intermediary payment service provider who uses a system with technical limitations shall, if the payment service provider of the payee requests, within 3 working days after the day on which the intermediary payment service provider receives the request, make available to the provider all the information on the payer that the intermediary payment service provider has received, whether or not the information is complete.
- (6) An intermediary payment service provider which has used a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds shall keep for 5 years records of all information on the payer that it has received.

*Concluding provisions*

**15 Co-operation**

- (1) A power under any of the specified enactments for a person to require another person to provide information to the person shall be taken to include the power to require a payment service provider to provide to the person –
  - (a) the information in relation to a payer that has accompanied a transfer of funds by or to the provider and that the provider is required to keep by these Regulations; and
  - (b) any records in relation to a payer that the payment service provider is required to keep by these Regulations.
- (2) Subject to any other enactment, any information to which paragraph (1) relates that is provided to a person under a specified enactment by virtue of the operation of paragraph (1) may only be used for the purposes of preventing, investigating or detecting money laundering or terrorist financing.
- (3) For the purposes of this Regulation, the specified enactments are –
  - (a) the Drug Trafficking Offences (Jersey) Law 1988<sup>[9]</sup>;
  - (b) the Proceeds of Crime (Jersey) Law 1999<sup>[10]</sup>;
  - (c) the Terrorism (United Nations Measures) (Channel Islands) Order 2001<sup>[11]</sup>;
  - (d) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002<sup>[12]</sup>; and
  - (e) the Terrorism (Jersey) Law 2002<sup>[13]</sup>.

**16 Designated officers**

- (1) The Chief Officer of the States of Jersey Police Force may, by public notice, designate one or more officers of that Force for the purposes of these Regulations.
- (2) The Agent of the Impôts may, by public notice, designate one or more officers of the Impôts for the purposes of these Regulations.
- (3) If no person is designated under paragraph (1) or (2), the Chief Officer of the States of Jersey Police Force and the Agent of the Impôts shall, respectively, be designated officers for the purpose of these Regulations.

Regulations.

**17 Citation and commencement**

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

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- [\[1\]](#) *chapter 17.245*
  - [\[2\]](#) *chapter 24.660*
  - [\[3\]](#) *chapter 13.250*
  - [\[4\]](#) *chapter 08.780.30*
  - [\[5\]](#) *chapter 24.660*
  - [\[6\]](#) *chapter 08.680*
  - [\[7\]](#) *chapter 08.580*
  - [\[8\]](#) *chapter 17.860*
  - [\[9\]](#) *chapter 08.580*
  - [\[10\]](#) *chapter 08.780*
  - [\[11\]](#) *chapter 17.910.72*
  - [\[12\]](#) *chapter 17.910.16*
  - [\[13\]](#) *chapter 17.860*