

# STATES OF JERSEY



## **DRAFT PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 4th May 2016  
by the Chief Minister**

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**STATES GREFFE**





Jersey

# **DRAFT PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-**

## **REPORT**

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### **Introduction**

The Draft Proceeds of Crime (Miscellaneous Amendments) (Jersey) Regulations 201- (the “draft Regulations”) implement, predominantly, a policy for regulation of virtual currency in Jersey.

The States of Jersey has placed a large amount of focus on Fintech, because the technologies that are being developed have a huge economic potential for Jersey, as a leading international finance centre, and for the world at large. Ultimately, the technologies being developed today will revolutionise the way we bank, the way we invest, the way companies raise money. It will lead to new products, new services, new lenders, and many new opportunities.

The role of governments in this developing area is to create the best environment in which financial innovation can flourish. Equally, governments should ensure that in order to create financial innovation, appropriate regulation should be introduced to protect the consumer against unacceptable risk and ensure that international standards are appropriately adopted.

Virtual currency systems can be significant building-blocks of a modern digital economy, and the introduction of an appropriate and proportionate regulatory regime in this area is intended to encourage confidence and innovation in the sector.

The draft Regulations demonstrate a piece of innovative regulation for Jersey, combining our experience in the area of financial services regulation with innovation in technology. The result of innovative regulation is that it should encourage new forms of Fintech business to be established in Jersey, creating jobs and growth in both the financial services and digital sectors. This was listed in the States’ Strategic Plan as a priority.

Other miscellaneous amendments to anti-money laundering and countering the financing of terrorism (“AML/CFT”) legislation are also made by the draft Regulations.

### **Risk assessment, consultation and policy feedback paper**

The States published a consultation on Regulation of Virtual Currency in 2015 after the insular authorities carried out a detailed assessment of the risks posed to Jersey earlier that year. Detail on the consultation and the feedback policy paper can be found here:

<http://www.gov.je/government/consultations/pages/regulationvirtualcurrency.aspx>

## **Regulation of virtual currency**

The draft Regulations therefore amend the Proceeds of Crime (Jersey) Law 1999 (“POCL”), principally to add the activities of carrying on the business of virtual currency exchange. This introduces regulation at the ‘interface’ between virtual and “fiat” currency, also known and understood as legal tender in any jurisdiction; and therefore applies the principles of the Money Laundering (Jersey) Order 2008 to anybody acting as a “virtual currency exchanger”. Equally, the draft Regulations amend the POCL to include virtual currency within the “high value dealers” regime, whereby if a person is, by way of business, willing to receive in respect of any transaction a payment of at least 15,000 Euros in the equivalent value to virtual currency, they must apply, therefore they are caught within the regulatory regime.

It is important to note that by virtue of an Order that is intended to be signed if the draft Regulations are adopted by the States, we intend to apply regulation both proportionally and appropriately by creating a threshold test, whereby until a threshold is reached (currently set at a turnover of £150,000 in a calendar year) those carrying on virtual currency exchange will not be fully supervised by the regulator, the Jersey Financial Services Commission (the “Commission”) so long as it notifies the Commission that it is carrying on this activity. Until such time as the threshold is exceeded, those carrying on virtual currency exchange will not be required to pay a fee to the Commission for Regulation. It is intended that the Commission will still have the necessary powers to investigate compliance by such a person, under the Money Laundering (Jersey) Order 2008 and other AML/CFT legislation, and will be able to take appropriate action – as and when necessary.

This threshold test creates an important regulatory “sandbox” in order to allow innovation and creativity to flourish without unnecessary “red tape”. This is designed to support start-up businesses who wish to engage in business that may involve virtual currency exchange.

The policy position introduced by this legislation on regulation should not be viewed as final; it should be viewed as acting as a starting point. Based on the responses to the consultation, we think this is a good starting-point, where Jersey can be the chosen location, both to allow existing virtual currency business to innovate and grow, whilst attracting new business to our shores.

We have also had regard in the development of this legislation to the evolving position in other jurisdictions on this topic since the time of our consultation, and particularly the recent EU initiative to amend the 4th Money Laundering Directive of the EU to cover regulation of virtual currency. Through continued contact with other jurisdictions developing such legislation and the EU, we hope this will strengthen the policy position Jersey is proposing to adopt by virtue of this legislation.

A working group has been established to finalise and develop both the policy and implementation of this legislation; this work consists of: the States of Jersey, the Jersey Financial Services Commission, Jersey Finance Limited and Digital Jersey, and industry members from both the financial services and digital sectors.

## **Other miscellaneous amendments to AML/CFT legislation contained in the draft Regulations**

The draft Regulations also make a number of other minor but relevant amendments to current AML/CFT policy. The Regulations include in the exemptions from the definition of financial services business in Jersey the definition of those who manage immovable property in Jersey. The Financial Crime Strategy Group, who advise the States on these matters, has recommended that in keeping with accepted practice and regulatory standards, they can properly be exempted from the requirement.

The draft Regulations also amend Schedule 2 of the POCL to include a new category of those who act otherwise than by way of business (which is already covered by Regulation of Trust and Company Service Providers), as trustee of an express trust. This is required as a result of the 2012 FATF Recommendations on AML/CFT, and was identified as an issue during our onsite assessment by MONEYVAL in 2015. In due course, a subsequent Order is intended to be made to restrict the requirements of the Money Laundering (Jersey) Order 2008 that will be applied to this category to identification requirements. This will ensure that all trustees operating in Jersey, whether by way of business, or for family trusts, have to obtain and retain identification details of all beneficial owners of a trust. Under the customary law of Jersey concerning trusts and the provisions of the Trusts (Jersey) Law 1984, it is clear that a trustee is under a duty to identify the beneficiaries of a trust – the addition of these provisions in appropriate AML/CFT legislation is, therefore, simply to place the position beyond doubt.

**Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

## Explanatory Note

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These Regulations would amend the Proceeds of Crime (Jersey) Law 1999 (the “1999 Law”), principally to add the activities of carrying on the business of virtual currency exchange, and acting as trustee of an express trust, to Part B of Schedule 2 to the 1999 Law, bringing these activities within the definition of “financial services business” for the purposes of that Law (and thus within the regulatory regime for the prevention of money laundering).

*Regulation 1* is an interpretation provision. *Regulation 2* makes various amendments to Article 1(1) of, and Schedule 2 to, the 1999 Law, including inserting a definition of “virtual currency” (*Regulation 2(2)(a)*), which substitutes paragraph 4 of Part B of Schedule 2).

*Regulation 3(2)* would correspondingly add the business of virtual currency exchange to the table in the Schedule to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “2008 Law”), again to bring that business under the supervisory regime established by that Law. (*Regulation 3(1)* updates the definition of “money laundering” in the 2008 Law, in line with recent changes to the 1999 Law.)

*Regulation 4* would make transitional provision providing for the case where a person is carrying on the business of virtual currency exchange on the day when the Regulation comes into effect, so as to exempt such a person from criminal liability under the 2008 Law for a period of 3 months beginning with that day, provided that the person applies for registration or notifies the Commission within that period.

*Regulation 2(2)(d)* makes an amendment to paragraph 7 of Part B of Schedule 2 to the 1999 Law which is unrelated to the matters above, but would have the effect of including, in the exemptions from the definition of “financial services business”, the provision of services of collecting, administering and disbursing service or maintenance charges in connection with immovable property in Jersey.

*Regulation 5* gives the title by which these Regulations may be cited, and provides for their commencement on a day to be appointed by Act of the States.



Jersey

## **DRAFT PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-**

### **Arrangement**

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Jersey

## **DRAFT PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) (JERSEY) REGULATIONS 201-**

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

**THE STATES**, in pursuance of Articles 1(9), 36(2) and 42A of the Proceeds of Crime (Jersey) Law 1999<sup>1</sup> and Articles 1(2), 11(4) and 44 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>2</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations –

“1999 Law” means the Proceeds of Crime (Jersey) Law 1999<sup>3</sup>; and

“2008 Law” means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>4</sup>.

### **2 1999 Law amended**

(1) In Article 1(1) of the 1999 Law, at the end for the full stop there shall be substituted a semi-colon and after the definition “value of property” there shall be added the following definition –

“ ‘virtual currency’ has the meaning given in Schedule 2, Part B, paragraph 4(4).”.

(2) In Part B of Schedule 2 to the 1999 Law –

(a) for paragraph 4 there shall be substituted the following paragraph –

#### **“4 High value dealers**

(1) The business of providing services as a high value dealer.

(2) A high value dealer is a person who, by way of business, trades in goods and receives in respect of any transaction (whether executed in a single operation, or in several operations which appear to be linked) payment of at least €15,000 in total.

(3) For the purposes of this paragraph, payment refers to payment in or by means of –

- (a) cash, including notes, coins, travellers' cheques, and bearer negotiable instruments; and
  - (b) any virtual currency.
- (4) 'Virtual currency' means any currency which (whilst not itself being issued by, or legal tender in, any jurisdiction) –
- (a) digitally represents value;
  - (b) is a unit of account;
  - (c) functions as a medium of exchange; and
  - (d) is capable of being digitally exchanged for money in any form.
- (5) For the avoidance of doubt, virtual currency does not include any instrument which represents or stores (whether digitally or otherwise) value that can be used only to acquire goods and services in or on the premises of, or under a commercial agreement with, the issuer of the instrument.”;
- (b) in paragraph 5(1) for the words “For the purposes of this Law,” there shall be substituted the words “The business of operating a casino, and for the purposes of this Law,”;
  - (c) in paragraph 7(1), clause (d) shall be deleted;
  - (d) for paragraph 7(2) there shall be substituted the following sub-paragraph –
    - “(2) A reference in this paragraph to providing services to third parties shall not include –
      - (a) the provision of the services of collecting, administering and disbursing service or maintenance charges (however described) in connection with immovable property situated in Jersey (including such property when it is occupied under a contractual lease or licence); nor
      - (b) the provision of a service by a company to a connected company.”;
  - (e) in paragraph 7(3) for the words “this paragraph” there shall be substituted the words “this Part of this Schedule”;
  - (f) after paragraph 8 there shall be added the following paragraphs –

**“9 Virtual currency exchange**

- (1) The business of providing, to third parties, the service of virtual currency exchange, where the business is not otherwise included in this Schedule.
- (2) In this paragraph –
  - (a) 'virtual currency exchange' means the exchange of virtual currency for money in any form, or vice versa; and
  - (b) a reference to providing a service to third parties shall not include a company's providing that service to a connected company.

**10 Express trusts**

- (1) Acting, otherwise than by way of business, as trustee of an express trust.
- (2) In this paragraph, “express trust” has the same meaning as is given to that expression by Article 1(1) of the Financial Services (Jersey) Law 1998<sup>5</sup>.”.

**3 2008 Law amended**

- (1) In Article 1(1) of the 2008 Law, for the definition “money laundering” there shall be substituted the following definition –
  - “ ‘money laundering’ means –
  - (a) conduct which is an offence under any provision of Articles 30 and 31 of the Proceeds of Crime (Jersey) Law 1999<sup>6</sup> or Articles 15 and 16 of the Terrorism (Jersey) Law 2002<sup>7</sup>; or
  - (b) conduct outside Jersey which, if occurring in Jersey, would be an offence specified in sub-paragraph (a).”.
- (2) In the table in the Schedule to the 2008 Law, in the entries in the column headed “Description of specified Schedule 2 business” corresponding to item 1 –
  - (a) in the first entry the word “(d),” shall be deleted;
  - (b) in the last entry for the word “8” there shall be substituted the words “8 or 9”.

**4 Transitional provision**

- (1) This Regulation applies in respect of any person who, immediately before the day on which this Regulation comes into effect (the “appointed day”), is carrying on the business of virtual currency exchange described in paragraph 9 of Part B of Schedule 2 to the 1999 Law, as added to that Schedule by Regulation 2(2)(f).
- (2) Notwithstanding any provision of the 2008 Law to the contrary, a person in respect of whom this Regulation applies shall not be taken to have committed any offence under Article 10(4) of that Law by reason of anything done or not done by the person in the course of carrying out that business –
  - (a) on and from the appointed day until the day 3 months after that day;
  - (b) on and from the appointed day until the day on which an application for registration under the 2008 Law is finally determined (including as a result of an appeal to the Court under Article 19 of the 2008 Law) or is withdrawn, provided that the person applies for registration –
    - (i) to the relevant supervisory body,

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- (ii) within the period of 3 months beginning with the appointed day; or
    - (c) if the person notifies the Commission within the period of 3 months beginning with the appointed day that the person is carrying on a specified Schedule 2 business, on and from the appointed day until the date of that notification.
  - (3) During the period for which, in accordance with paragraph (2), a person is to be taken not to have committed any offence, the provisions of the 2008 Law shall apply (with the necessary modifications) to and in relation to that person as they apply to and in relation to a registered or a supervised person.
  - (4) A person who has notified the Commission in accordance with paragraph (2)(c) shall be a deemed registered person under the 2008 Law.
  - (5) In this Regulation, “Commission”, “specified Schedule 2 business”, “registered person” and “supervised person” have the meanings given to those expressions by Article 1(1) of the 2008 Law.

## **5 Citation and commencement**

These Regulations may be cited as the Proceeds of Crime (Miscellaneous Amendments) (Jersey) Regulations 201- and shall come into force on such day or days as the States may by Act appoint.

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- 1 *chapter 08.780*
  - 2 *chapter 08.785*
  - 3 *chapter 08.780*
  - 4 *chapter 08.785*
  - 5 *chapter 13.225*
  - 6 *chapter 08.780*
  - 7 *chapter 17.860*