

Deputy Moz Scott
Chair
Economic & International Affairs Scrutiny Panel
By email

08 November 2023

Dear Chair,

Thank you for your letter dated 25 October 2023, copied to Deputy Morel as MSED, Deputy Gorst as Assistant MER and ACM with delegated responsibility for Financial Services and Deputy Millar also as ACM with delegated responsibility for Financial Services.

Please accept my apologies for the longer than usual response to your letter. The delay is regretted and due the serious weather events last week and my own return to office after a period of ill-health and the need for advice on the issue you have quite properly raised.

You will have noted that the policy decision to legalise amend Article 1(1) of the Proceeds of Crime (Jersey) Law 1999 and to promote Cannabis were taken by the last government and at the time of writing are not ones which have as yet been reconsidered by the current government – accordingly whilst the current government could in theory reconsider and alter the approach – as it is not one of the current government's priorities – the policies in force are extant inherited ones. As such I have sought advice and this letter is based on advice received.

Proceeds of Crime Law and International Cultivation of Cannabis

And your request to outline “the Government of Jersey’s position on the international financing of the manufacture and supply of recreational cannabis, noting the potential conflict between the Convention and the Island’s legislation regarding proceeds of crime” on the basis that “Canada, which is a jurisdiction included within the Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Jersey) Order 2021, has legalised recreational use of Cannabis in potential contradiction of the Convention.” we are providing the following response:

1. It remains Government’s policy for Jersey to comply with the highest international standards, especially regarding the prevention, detection and prosecution of money laundering, terrorist financing and proliferation financing, as set by the Financial Action Task Force (FATF) through its Standards including the forty Recommendations and eleven Immediate Outcomes.
2. The Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Jersey) Order 2021 (the “2021 Order”) was signed by the MER of the day following the adoption by the States Assembly of Proposition 45/2021 (P.45/2021) which contained the Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 2021 and which is attached for ease of reference. From the Report to P.45/2021, we quote the following:

“The list of countries in that Order is based on the outcomes of mutual evaluation reports carried out by the Financial Action Task Force (FATF) and their FATF style regional bodies (such as MONEYVAL) against the FATF Standards which are the international standards concerning money laundering, terrorist financing and financing of proliferation. The policy intention of this Order is to ensure Jersey only deals in proceeds where the origin of those proceeds is in a country which applies suitably equivalent money laundering controls to Jersey.”

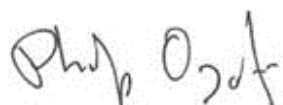
It is Government policy not to include any country which is either included in the FATF’s list of High-Risk Jurisdictions subject to a Call for Action (“blacklist”) or in the FATF’s list of Jurisdictions under Increased Monitoring (“grey list”) in the 2021 Order. Thereby, the 2021 Order ensures that financial institutions in Jersey can only deal with proceeds from countries and jurisdictions which apply suitable money laundering controls, and which comply with the FATF Standards.

Both FATF lists are constantly monitored by the Financial Crime Strategy directorate within the Department for the Economy, which would propose changes to the 2021 Order to the respective Minister, should the status of a particular country or jurisdiction change. Since the enactment of the 2021 Order, this has happened only once via the Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Amendment) (Jersey) Order 2023 when South Africa was removed from the list in the 2021 Order, due to it being added to the FATF grey list in February 2023.

3. I note that the Panel suggests that, either in its view or the view of an individual corresponding with the Panel, there is an inconsistency between Jersey’s approach outlined above and Article 3 of the 1988 United Nation Convention against illicit traffic in narcotic drugs and psychotropic substances (the 1988 Convention), which was extended to Jersey in 1997. However, it is unclear on what basis that concern arises, or that this is properly grounded in the specific terms of the 1988 Convention.
4. It is important to recognise that the 1988 Convention is concerned with illicit traffic in narcotics. Article 3.1(a)(i) and (ii) of the 1988 Convention impose on each party an obligation to establish criminal offences under “its domestic law” concerning, among other things, the cultivation of the cannabis plant for the purpose of the production of narcotic drugs contrary to the 1961 Convention. Taking the example of Canadian cannabis cultivation, it is a matter for Canada to determine the extent to which it criminalises cannabis cultivation in line with its international obligations.
5. The obligations in Article 3.1(a)(v) and 3.1(b) and (c) of the 1988 Convention require each party to criminalise certain acts that facilitate the commission of offences established either by that party or another party of the nature set out in Article 3.1(a), or the acquisition, conversion or transfer of property derived from such offences. However, while a party might choose to, these provisions do not appear to require parties to the 1988 Convention to criminalise the financing of lawful cannabis cultivation or trade in cannabis in the territory of another party.
6. In summary, it is not for the Government of Jersey to determine whether Canada is compliant with the 1988 Convention. However, like all other countries listed in the 2021 Order, Canada is subject to the FATF’s mutual evaluation process, which

includes, inter alia, an assessment by the FATF, regarding Canada's compliance with the Convention. Should Canada, as part of this mutual evaluation process, be added to either of the two FATF lists, due to insufficient compliance with the FATF Standards, it would be removed from the 2021 Order in line with the aforementioned policy.

Kind regards,



Deputy Philip Ozouf
Minister for External Relations

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