



Jersey

DRAFT PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) (JERSEY) LAW 202-

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DRAFT PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) (JERSEY) LAW 202-

A **LAW** to amend the Proceeds of Crime (Jersey) Law 1999 to make changes to Jersey's AML/CFT exemptions regime.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Proceeds of Crime (Jersey) Law 1999 amended

- (1) For Article 36 of the Proceeds of Crime (Jersey) Law 1999 there is substituted –

“36 Financial services business

- (1) Any natural or legal person who conducts as a business for or on behalf of a customer one or more of the activities and operations set out in Parts 2, 3 and 4 of Schedule 2 is a financial services business for the purposes of this Law.
- (2) Any natural or legal person who conducts, otherwise than as a business for or on behalf of customers, the activities and operations set out in Part 5 of Schedule 2 is deemed to be financial services business for the purposes of this Law.
- (3) Paragraph (1) applies even if, in the course of the conduct of the activities or operations as a business, the customer receives a shareholding, unit or other interest or right in a body corporate or legal arrangement.
- (4) An activity or operation set out in Part 2, 3 or 4 of Schedule 2 is not conducted as a business for or on behalf of a customer if the activity or operation is provided internally to an overall business.

- (5) For the purposes of paragraph (3), an activity or operation is provided internally to the operation of an overall business if it is provided for or on behalf of a connected party, unless –
 - (a) the connected party is –
 - (i) incorporated or otherwise registered as a legal person under the law of a jurisdiction outside Jersey,
 - (ii) a natural or legal person resident outside of Jersey, including where the activity or operation is provided to a branch, office, establishment or other place of business, based outside of Jersey;
 - (b) the business operations of the connected party includes providing activities or operations referred to in Part 2, 3 or 4 of Schedule 2 to parties that are not connected parties.
- (6) The Commission may issue guidelines on the interpretation of any provision in Schedule 2, including any expression used in Schedule 2.
- (7) Regard must be had to any guidelines issued under paragraph (6) concerning the interpretation of any expression in Schedule 2.
- (8) Guidelines issued under paragraph (6) must be published by the Commission in a manner which the Commission considers will bring it to the attention of those most likely to be affected by it.
- (9) In interpreting an expression used in Schedule 2 and not defined, account must be taken of the meaning, if any, given to that expression in –
 - (a) the FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations as updated from time to time; or
 - (b) the FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and Effective of AML/CFT Systems, as updated from time to time.
- (10) The Minister for External Relations and Financial Services may amend Schedule 2 by Order and may –
 - (a) add, remove or vary an exemption set out in Schedule 2;
 - (b) add activities and operations to the scope of paragraph 24 of Schedule 2 where virtual assets are exchanged for assets other than other virtual assets or fiat currency.
- (11) In this Article –
 - “connected party” means, in relation to an entity –
 - (a) any other entity in the same group as the first mentioned entity;
 - (b) any other entity with which the first-mentioned, either alone or with another entity in the same group, exercises or controls the exercise of the majority of the voting rights (other than as nominee);
 - (c) any other entity in which the first-mentioned entity, or any other entity in the same group as the first-mentioned entity, holds an interest in the equity share capital carrying rights to

vote in all circumstances at general meetings for the purposes of securing contribution to the activities or operations of the first-mentioned entity or the entity in the same group as that first-mentioned entity, by the exercise of control or influence arising from that interest;

- (d) a party to a joint enterprise in which the services of the joint enterprise are provided for the furthering a business venture of the parties to the joint enterprise;

“group” in relation to an entity means that entity, any other entity which is its holding entity or subsidiary and any other entity which is subsidiary of that holding entity;

“joint enterprise” means an enterprise into which persons participating whether for commercial purposes related to a business other than an investment business carried on by such person, and where the person participating is an entity, each entity with which it is connected is also regarded as a person participating in the joint enterprise;

- (12) In this Article and Schedule 2, a reference to “natural or legal person” includes where such a person conducts operations or activities as a business by way of a legal arrangement, despite what it is called, through which the person has arranged to conduct their business, including a trust, unit trust and partnership.

- (13) [Exemptions – Schedule 2A]”.

- (2) After Article 44 of the [Proceeds of Crime \(Jersey\) Law 1999](#) there is inserted –

44A Consequential and transitional provisions

- (1) The States may, by Regulations –

- (a) make such consequential and transitional provisions; or
(b) make amendments to any other enactment,

as appear necessary or expedient in connection with the coming into force of the Proceeds of Crime (Miscellaneous Amendments)(Jersey) Law 202-

- (2) Without prejudice to the generality of Schedule 2, regulations made under paragraph (1) may –

- (a) create a notification regime for persons who may be granted an exemption under Schedule 2;
(b) make arrangements for the position for persons who prior to the commencement of the Proceeds of Crime (Miscellaneous Amendments)(Jersey) Law 202- were regulated under the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#);
(c) make transitional provisions as are necessary or expedient requiring persons mentioned in sub-paragraph (b) to be registered under the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#).”.

- (3) For Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 there is substituted –

“SCHEDULE 2

(Article 36)

FINANCIAL SERVICES BUSINESS

PRELIMINARY

PART 1

1 Interpretation

In this Schedule –

“fund” means any scheme or arrangement which pools capital raised and operates on the principle of risk spreading; the funds being raised from offers to investors being members of the public, or investors restricted by criteria such as the number of offers, minimum subscription, or the investors’ net worth, level of financial sophistication, risk tolerance or other such criteria;

“legal person” includes a company, body corporate, foundation, anstalt, partnership or association, and any other relevantly similar entity;

“securities” means any of the following –

- (a) shares, stock, debentures, debenture stock, loan stock or bonds;
- (b) warrants entitling the holders to subscribe for any securities specified in sub-paragraph (a);
- (c) units in a fund;
- (d) life assurance policy;
- (e) other securities of any description.

PART 2

FINANCIAL INSTITUTIONS

2 Banking

- (1) Acceptance of deposits and other repayable funds from the public. This includes private banking.
- (2) Sub-paragraph (1) includes deposit-taking business within the meaning given under Article 3(1), (2) and (3) of the [Banking Business \(Jersey\) Law 1991](#).

3 Lending

- (1) Lending.
- (2) Sub-paragraph (1) includes inter alia: consumer credit mortgage credit, factoring, with or without recourse; and finance of commercial transactions (including forfeiting).

4 Financial leasing

- (1) Financial Leasing.
- (2) Sub-paragraph (1) does not extend to financial leasing arrangements in relation to consumer products.

5 Money or value transfer services

- (1) Money or value transfer services. This does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds.
- (2) Sub-paragraph (1) includes money service business within the meaning given under Article 2(9) (b), (c) and (d) of the [Financial Services \(Jersey\) Law 1998](#).

6 Means of payment

Issuing and managing means of payment (such as credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, and electronic money).

7 Financial guarantees and commitments

Financial guarantees and commitments.

8 Trading

- (1) Trading in –
 - (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.);
 - (b) foreign exchange;
 - (c) exchange, interest rate and index instruments;
 - (d) transferable securities; or
 - (e) futures and options (financial and commodity).
- (2) Sub-paragraph (1) includes investment business within the meaning given under Article 2(2)(a) and (b) of the [Financial Services \(Jersey\) Law 1998](#).
- (3) In this paragraph “trading” includes acting as a principal or agent.

9 Fund and security services activities

- (1) Participation in securities issues and the provision of financial services related to such issues.
- (2) Sub-paragraph (1) includes the following fund and security services activities –
 - (a) fund or issuer of securities; and
 - (b) service providers to a fund or issuer of securities, including acting as manager, administrator, designated service provider, registrar, investment manager, investment adviser, distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent, repurchase agent, trustee, custodian, depositary, manager of a managed entity or a member of a partnership (other than a limited partner).
- (3) Sub-paragraph (1) includes investment business within the meaning given under Article 2(2) of the [Financial Services \(Jersey\) Law 1998](#).

10 Advice on capital structure, industrial strategy etc.

The business of providing advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

11 Portfolio management

- (1) Individual and collective portfolio management.
- (2) Sub-paragraph (1) includes –
 - (a) the business of providing portfolio management including the business of providing advice;
 - (b) investment business within the meaning given under the Article 2(2) of the [Financial Services \(Jersey\) Law 1998](#);
 - (c) fund and security services activities –
 - (i) fund or issuer of securities, and
 - (ii) service providers to a fund or issuer of securities, including acting as manager, administrator, designated service provider, registrar, investment manager, investment adviser, distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent, repurchase agent, trustee, custodian, depositary, manager of a managed entity or a member of a partnership (other than a limited partner).

12 Safe keeping and administration

- (1) Safekeeping and administration of cash or liquid securities on behalf of other persons.

- (2) Sub-paragraph (1) includes the business of safekeeping and administration of securities in relation to funds, securities or other persons.

13 Safe custody services

Safe custody services in relation to other persons.

14 Investing, administering or managing funds or money

Investing, administering or managing funds or money on behalf of other persons where such activities are not otherwise listed in this Part.

15 Underwriting and placement of life assurance and insurance

- (1) Underwriting and placement of life insurance and other investment related insurance. This applies both to insurance undertakings and to insurance intermediaries (agents and brokers).
- (2) Sub-paragraph (1) includes –
 - (a) long-term business within the meaning given under Article 1(1) of the [Insurance Business \(Jersey\) Law 1996](#); and
 - (b) investment business within the meaning given by Article 2(2) (a) and (b) of the [Financial Services \(Jersey\) Law 1998](#).

16 Money and currency

- (1) Money and currency changing.
- (2) Sub-paragraph (1) includes money service business within the meaning under Article 2(9)(a) of the [Financial Services \(Jersey\) Law 1998](#) as a bureau de change.

17 Money broking

- (1) Money broking to third parties.
- (2) Sub-paragraph (1) includes the business of providing the service of money broking to third parties.

PART 3

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

18 Casinos

- (1) Casinos (including internet and ship-based casinos).
- (2) Sub-paragraph (1) includes the business of operating a casino.
- (3) For the purposes of this paragraph, a person operates a casino if, by way of business the person provides a service that –

(a) is a gambling service, within the meaning of Article 2 of the [Gambling \(Jersey\) Law 2012](#); and

(b) consists of giving people an opportunity to participate in one or more casino games.

(4) For the purposes of this paragraph –

“casino” means an arrangement whereby people are given an opportunity to participate in one or more casino games;

“casino game” means a game of chance –

(a) that involves playing or staking against a bank (whether described as a “bank” and whether or not controlled or administered by a player); and

(b) in which the chances are not equally favourable to all participants.

19 Real estate agents

(1) Real estate agents.

(2) Sub-paragraph (1) includes the business of providing estate agency services for or on behalf of third parties concerning the buying or selling of –

(a) freehold (including flying freehold) or leasehold property (including commercial and agricultural property); or

(b) shares the ownership of which entitles the owner to occupy immovable property,

whether the property is situated in Jersey or overseas.

20 High value dealers

(1) Dealers in precious metals, precious stones and other goods.

(2) Sub-paragraph (1) includes the business of providing services as a high value dealer.

(3) For the purposes of this paragraph, a “high value dealer” is a person who, by way of business, trades in goods (including precious metals and precious stones) 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 (Euros) in total.

(4) For the purposes of this paragraph –

“payment” means payment in or by means of –

(a) cash, including notes, coins, travellers’ cheques, and bearer negotiable instruments; and

(b) any virtual currency;

“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.

21 Lawyers, etc.

- (1) Lawyers, notaries, other independent legal professions. This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.
- (2) Sub-paragraph (1) includes the business of providing services by an independent legal professional.
- (3) In this paragraph, independent legal professional” means a person (including a lawyer or a notary) who by way of business provides legal or notarial services to third parties when participating in financial, or immovable property, transactions concerning any of the following –
 - (a) the buying and selling of immovable property or business entities;
 - (b) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;
 - (c) the managing of client money, securities or other assets;
 - (d) the opening or management of bank, savings or securities accounts;
 - (e) the organization of contributions necessary for the creation, operation or management of companies; or
 - (f) the creation, operation or management of trusts, companies or similar structures.

22 Accountants

- (1) Accountants. This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to “internal” professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.
- (2) Sub-paragraph (1) includes the business of providing any of the following –
 - (a) external accountancy services;
 - (b) advice about the tax affairs of another person;
 - (c) audit services;
 - (d) insolvency services;
 - (e) advice to third parties when participating in financial, or immovable property, transactions concerning any of the following –

- (i) the buying and selling of immovable property or business entities;
- (ii) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;
- (iii) the managing of client money, securities or other assets;
- (iv) the opening or management of bank, savings or securities accounts;
- (v) the organization of contributions necessary for the creation, operation or management of companies; or
- (vi) the creation, operation or management of trusts, companies or similar structures.

(3) In this paragraph –

“external accountancy services” means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties;

“audit services” are audit services provided by way of business pursuant to any function under any enactment;

“insolvency services” are services provided by a person if, by way of business, that person accepts appointment as –

- (a) a liquidator under Chapter 4 of Part 21 of the [Companies \(Jersey\) Law 1991](#);
- (b) an insolvency manager appointed under Part 5 of the [Limited Liability Partnerships \(Jersey\) Law 2017](#) as that Law has effect in its application to insolvent limited liability partnerships under the Limited Liability Partnerships (Dissolution and Winding up) (Jersey) Regulations 2018; or
- (c) as agent of an official functionary appointed in the case of a remise de biens, cession, or désastre.

23 Trust and companies Service providers

(1) *Formation agent*

- (a) Acting as a formation agent of legal persons.
- (b) Sub-paragraph (1) includes –
 - (i) the business of providing services to or in respect of types of legal person or arrangement other than those described in Article 2(5)(a) and (b) of the [Financial Services \(Jersey\) Law 1998](#), in the course of which services are provided that are similar or equivalent to those described in Article 2(4) of that Law as if Article 2(4) referred to that type of legal person or arrangement, and

- (ii) trust company business under the [Financial Services \(Jersey\) Law 1998](#) where the person carries on a business that involves the provision of –
 - (A) company administration services,
 - (B) services to foundations, or
 - (C) services to partnerships,
 and in the course of providing those services, the person provides the service of acting as a company formation agent, a partnership formation agent or a foundation formation agent.
- (c) For the purposes of this sub-paragraph, a person acts as a company formation agent, a partnership formation agent or a foundation formation agent if the person arranges for the registration, formation or incorporation, or the sale, transfer or disposal, of companies, partnerships or foundations.
- (d) In this sub-paragraph, a reference to a company, partnership or foundation is a reference to a company, partnership or foundation wherever incorporated or otherwise established; and to any similar or equivalent structure or arrangement, regardless of its name.

(2) ***Director, secretary, partner, etc.***

- (a) Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons.
- (b) This includes a person who carries on trust company business under the [Financial Services \(Jersey\) Law 1998](#) where the person carrying on the trust company carries on a business that involves the provision of company administration services; the provision of services to foundations; or the provision of services to partnerships and, in the course of providing those services, the person provides the service of –
 - (i) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company,
 - (ii) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership,
 - (iii) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a member of the council of a foundation, or
 - (iv) acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company or a limited liability partnership.
- (c) In sub-paragraph (2), a reference to a company, partnership or foundation is a reference to a company, partnership or foundation wherever incorporated or otherwise established; and to any similar or equivalent structure or arrangement, regardless of its name.

(3) ***Registered office, addresses, etc.***

- (a) Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement.
- (b) This includes a person who provides trust company business under the [Financial Services \(Jersey\) Law 1998](#) where the person carries on a business that involves the provision of company administration services; trustee or fiduciary services; services to foundations; or services to partnerships and, in the course of providing those services, the person provides –
 - (i) a registered office or business address for a company, a partnership or a foundation,
 - (ii) an accommodation, correspondence or administrative address for a company, a partnership or a foundation or for any other person.
- (c) In paragraph (1), a reference to a company, trust, partnership or foundation is a reference to –
 - (i) a company, trust, partnership or foundation wherever incorporated or otherwise established, and
 - (ii) any similar or equivalent structure or arrangement, regardless of its name.

(4) ***Trustee of an express trust or equivalent***

- (a) Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement.
- (b) This includes a person who carries on trust company business under the [Financial Services \(Jersey\) Law 1998](#) where the person carries on a business that involves the provision of trustee or fiduciary services and, in the course of providing those services, the person provides the service of acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust.
- (c) In this paragraph, a reference to a trust is a reference to a trust wherever established and to any similar or equivalent structure or arrangement, regardless of its name.
- (d) In this paragraph “express trust” has the meaning given to that expression by Article 1(1) of the [Financial Services \(Jersey\) Law 1998](#).

(5) ***Nominee shareholder***

- (a) Acting as (or arranging for another person to act as) a nominee shareholder for another person.
- (b) This includes trust company business under the [Financial Services \(Jersey\) Law 1998](#) where the person carries on a business that involves the provision of company

administration services, services to foundations or services to partnerships and, in the course of those services, the person provides the service of acting as or fulfilling or arranging for another person to act as shareholder or unitholder as a nominee for another person.

- (c) In paragraph (1), a reference to a company, partnership or foundation is a reference to a company, partnership or foundation wherever incorporated or otherwise established; and to any similar or equivalent structure or arrangement, howsoever named.

PART 4

VIRTUAL ASSET SERVICE PROVIDER

24 Virtual asset service provider

- (1) Virtual asset service provider.
- (2) Sub-paragraph (1) includes a person who carries on the business of conducting one or more of the following activities or operations for or on behalf of another natural or legal person –
- (a) exchange between virtual assets and fiat currencies,
 - (b) exchange between one or more forms of virtual assets,
 - (c) transfer of virtual assets,
 - (d) safekeeping or administration of virtual assets or instruments enabling control over virtual asset,
 - (e) participation in and provision of financial services related to an issuer's offer and or sale of a virtual asset.
- (3) In this paragraph "transfer", in relation virtual assets, means to conduct a transaction on behalf of another natural or legal person that moves a virtual asset from one virtual asset address or account to another.

PART 5

EXPRESS TRUSTS

25 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](#)

[SCHEDULE 2A

(Article 36)

EXEMPTIONS]”.**2 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 amended**

Article 1 of Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 is amended as follows –

- (a) in paragraph (1), after the definition “pension supervisor” there is inserted –

“ “person” includes (in so far as they have legal personality), all companies, bodies corporate, foundations anstalt, partnerships or associations and other relevantly similar entities;”;

- (b) after paragraph (1) there is inserted –

“(1A) In this Law, a reference to a person carrying on a type of business includes a person who conducts operations or activities as a business by way of a legal arrangement, despite what it is called, which the person has arranged to conduct their business, including a trust, unit trust and partnership”.

3 Citation and commencement

This Law may be cited as the Proceeds of Crime (Miscellaneous Amendments) (Jersey) Law 202- and comes into force on a day to be specified by the States by Act.