

# STATES OF JERSEY

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## **DRAFT PROCEEDS OF CRIME (AMENDMENT) (JERSEY) LAW 200-**

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

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**STATES GREFFE**





Jersey

# **DRAFT PROCEEDS OF CRIME (AMENDMENT) (JERSEY) LAW 200-**

## **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Proceeds of Crime (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

# REPORT

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## Introduction

1. In 2008 the Island's framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund. Jersey will be assessed against the international standards set by the Financial Action Task Force on Money Laundering ("FATF"). The amendments to this draft Law have been formulated to achieve a number of the criteria set out in the 40 Recommendations and 9 Special Recommendations of the FATF, against which Jersey will be assessed and also to address inconsistencies in the current operation of the Proceeds of Crime (Jersey) Law, 1999, ("POCL") the Drug Trafficking Offences (Jersey) Law, 1988 ("DTOL") and the Terrorism (Jersey) Law, 2002 ("TL").

## Part 2

### Failing to disclose a knowledge or suspicion of money laundering

2. Recommendation 13 of the FATF provides that,  
*"If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU)."*
3. The FATF Methodology for Assessing Compliance with the 40 Recommendations and 9 Special Recommendations, which is designed for use by assessors when preparing their reports and expands on the text of the Recommendations, states the following in reference to Recommendation 13:  
*"13.1\* A financial institution should be required by law or regulation to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. At a minimum, the obligation to make a STR should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. This requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a ML offence or otherwise (so called "indirect reporting"), is not acceptable."*
4. Jersey was last assessed by the IMF in 2003. In the Report that followed that assessment the following was stated –  
*"The POCL should be amended to provide financial institutions with an affirmative obligation to report suspicious transactions rather than the act of reporting being used as a defence against the money laundering offence."*
5. It is apparent from the 2003 Report that the IMF did not consider that the existing POCL provisions went far enough to meet Recommendation 13 because the Law did not create a direct mandatory obligation on financial institutions to report a knowledge or suspicion, or reasonable grounds for a knowledge or suspicion, of money laundering. Instead under the current provisions the reporting of such a knowledge or suspicion is a defence to the offences set out under Articles 32 and 33 of the POCL.
6. Given that this point was commented on by the IMF in 2003, it is thought that Jersey would be likely to receive adverse comment from the IMF during next year's assessment if this matter has not been addressed. The deficiency in the POCL is particularly highlighted by the fact that both the DTOL and TL include offences for failing to disclose a knowledge or suspicion of money laundering. Article 4C of the DTOL requires a person who knows or suspects that another person is drug money laundering to report to a police officer that knowledge or suspicion, if based on information that comes to the person's attention in the course of his or her trade, profession, business or employment. A similar provision applicable to a person who comes across information in the course of their trade, profession, business or employment (but not if it comes to him or her in the course of the business of

- a financial institution) can be found at Article 20 of the TL. Article 23 of the TL sets out a difference offence, in similar terms to the offence being created here under Article 34D, which applies to a person working in a financial institution.
7. The offence created at Article 34A of the draft Law applies to a person who, in the course of his or her trade, profession business or employment, comes to know or suspect someone is engaged in money laundering and who fails to disclose that knowledge or suspicion to a police officer. This offence is the equivalent offence to the offence in Article 40 of the DTOL and Article 20 of the TL.
  8. The offence created at Article 34D applies to a person who comes into information in the course of carrying on a financial services business. If, based on that information, the person knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering and fails to disclose that information to a police officer or nominated officer then they commit the offence. Article 34D essentially introduces a negligence test in respect of those working in the regulated industry so that the failure to disclose offence is committed where a person has reasonable grounds for knowing or suspecting that another person is engaged in money laundering, even if they did not actually know or suspect that was the case. This reflects the fact that persons who carry out activities in the regulated sector are expected to exercise a higher level of diligence in handling transactions, as opposed to those employed in other businesses. This offence is the equivalent to the offence in Article 23 of the TL. A new offence in the same terms is to be introduced into the DTOL.

### **Financial Information and Account Monitoring Orders**

9. Recommendation 28 of the FATF Recommendations is as follows –
 

***“Recommendation 28***

*When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.”*
10. The FATF Methodology states the following –
 

*“28.1 Competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences should have the powers to be able to –*

  - a) *compel production of,*
  - b) *search persons or premises for, and*
  - c) *seize and obtain*

*transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. Such powers should be exercised through lawful process (for example, subpoenas, summonses, search and seizure warrants, or court orders) and be available for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions e.g. actions to freeze and confiscate the proceeds of crime.”*
11. Article 32 and Schedule 6 of the TL provide that the Bailiff may, on an application made to him or her by an officer of the Force of at least the rank of chief inspector, order a financial institution to which the order applies to provide customer information to an officer of the force named in the order for the purposes of a terrorist investigation.
12. Under Article 33 of Schedule 7 of the Terrorism (Jersey) Law 2002, the Bailiff may, on an application made to him or her by an officer of the Force of at least the rank of chief inspector, make an account monitoring order for the purposes of a terrorist investigation.
13. Neither of these powers exist under the POCL or DTOL. It is considered that that this could receive adverse comment from the IMF, who may query why such powers are available in relation to terrorist offences but not offences committed under the other two Laws. The amendments are

therefore sought to bring the POCL, DTOL and TL in line so that account monitoring orders and customer information orders can be obtained under all three pieces of legislation. This amendment also reflects the position under the 2002 UK Proceeds of Crime Act which allows for customer information and account monitoring orders to be obtained in relation to money laundering investigations.

### **Part 3**

#### **Enforcement of External Confiscation Orders**

14. Recommendation 38 of the Financial Action Task requires countries to have appropriate laws and procedures in place to provide an effective and timely response to mutual legal assistance.
15. Currently the provision of assistance to another jurisdiction to enable the enforcement of an external confiscation order under the Proceeds of Crime (Jersey) Law 1999 is conditional on that jurisdiction being listed, currently in the Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999, as a designated country or territory to whom assistance can be given. The same is true in relation to the enforcement of an external confiscation order under the DTOL, the enforcement of an external restraint or forfeiture order under the TL and the enforcement of an overseas forfeiture order under the Criminal Justice (International Co-operation) (Jersey) Law 2001 (“CJICL”).
16. Under the draft Law, the enforcement in Jersey of external confiscation orders will no longer be conditional on countries or territories being designated. The amendments enable external confiscation orders from any jurisdiction to be capable of being registered by the Royal Court. Article 39(1) of the POCL provides that the Royal Court may register an external confiscation order if –
  - (a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;
  - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and
  - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
17. Draft Regulations replacing those which already exist will soon be debated. The provisions contained in the Regulations will remain substantively the same. It is intended that the only changes to the Regulations which will be pursued are those necessary in order to remove any references currently made to designated countries or territories. Similar amendments are being made to the DTOL, TL and CJICL.
18. Whilst the notion of providing assistance to only designated countries or territories is thought unlikely to receive adverse comment by the International Monetary Fund, the list of designated countries has not been kept up to date in recent years and it is thought highly likely that Jersey will be criticised for not giving “*effective*” mutual legal assistance because of this. Whilst compliance with FATF Recommendation 38 in this regard could possibly be achieved by updating the list of designated countries or territories, it is considered that the better solution would be to abandon the list of countries and offer assistance to jurisdictions on a case by case basis. Indeed this is the approach that has been adopted in regards to the UK legislation, on which the relevant Jersey legislation was originally based.

### **Part 4 – Miscellaneous and closing**

#### **Asset sharing arrangement**

19. Article 13 amends the term “asset sharing arrangement” in Article 24 of the POCL and replaces it with the term “asset sharing agreement”. This amendment is considered necessary to provide for the consistent use of same terms across the DTOL and POCL. The DTOL refers to “assets-sharing agreement” at present, whilst the POCL refers to “asset sharing arrangement”. These two terms carry different definitions in each of those Laws. Amendments to provide for asset sharing under the TL have been taken in preparation for the IMF assessment. As those amendments were already being made, it was thought appropriate for a comprehensive and consistent meaning to be applied across

the three Laws.

20. Article 13 also provides for the designation of the Criminal Offences Confiscation Fund as a special fund. This amendment is aimed at clarifying the fund's status further to its omission from the list of special funds in the Public Finances (Transitional Provisions) (No. 1) (Jersey) Regulations 2005.

#### **Article 37 Amendments**

21. Recommendations 4-12 of the FATF Recommendations provide for certain measures to be taken by financial services businesses to prevent and detect money laundering and terrorist financing. These measures cover customer due diligence, record-keeping and compliance.
22. In Jersey, measures to be taken by financial services businesses have been established by the Money Laundering (Jersey) Order 1999, which is issued under Article 37 of the POCL. At present Article 3 only provides that the Minister may prescribe procedures, under the Order, to be maintained by persons who carry on financial services business for the purposes of forestalling and preventing money laundering. This remit is no longer wide enough to address all of the measures that the FATF Recommendations require financial services businesses to take, in particular in relation to the detection of money laundering.
23. The amendment widens the scope of Article 37 by giving the Minister a general power to prescribe measures to be taken (and measures not to be taken) by financial services businesses in line with the FATF Recommendations through the vehicle of the Order.
24. Draft Article 37 also provides a basis for the Order to permit information to be disclosed by a financial services business to other businesses – where those businesses are part of the same group of companies, or part of a network of businesses that includes the financial services business. This amendment is in line with the European Union's Third Money Laundering Directive.

#### **Financial/manpower implications**

The creation of an offence for failing to disclose a knowledge or suspicion of money laundering may result in an increase in Suspicious Activity Reports ("SARs") being transmitted to the Joint Financial Crimes Unit ("JFCU").

Two additional members of staff, at an annual cost of £115,000, are required by the JFCU to deal with the consequences of implementing the Proceeds of Crime (Substitution of Schedule 2) (Jersey) Regulations 2000. Those Regulations widen the number of institutions which will come under the remit of the Proceeds of Crime (Jersey) Law 1999 in the future. It is considered that these 2 additional posts will, for the time being, be sufficient to deal with any increase in the filing of SARs as a result of the introduction of the new offence of failing to disclose a knowledge or suspicion of money laundering into this Law. The position will be reviewed post-implementation and additional resources sought if required.

#### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 20th September 2007 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Proceeds of Crime (Amendment) (Jersey) Law 2000- are compatible with the Convention Rights.

## Explanatory Note

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### **Part 1 – Interpretation**

*Article 1* defines the Proceeds of Crime (Jersey) Law 1999 as the “principal Law”.

### **Part 2 – Failure to disclose knowledge or suspicion of money laundering**

*Article 2* amends Article 1 so as to provide for references to “legal privilege” to be defined in accordance with the definition “items subject to legal privilege”.

*Article 3* amends Article 29 of the principal Law so as to add a restriction on onward disclosure by a police officer of information disclosed to the officer under Article 34A or 34D, inserted below.

*Article 4* inserts Articles 34A to 34D in the principal Law.

#### **Article 34A – Failure to disclose knowledge or suspicion of money laundering**

This Article requires a person who, in the course of his or her work, comes to know or suspect that someone else is engaged in money laundering, to report that knowledge or suspicion to a police officer. A failure to do so will be a serious criminal offence. The requirement does not apply to persons who work (whether as employers or employees) in financial services businesses, such as banks or trust companies.

#### **Article 34B – Statutory defences**

This Article makes it a defence to a charge under Article 34A either that the person had a reasonable excuse for not disclosing the information or that, where the person is an employee, he or she disclosed the information in accordance with his or her employer’s reporting requirements.

#### **Article 34C – Cases to which Article 34A does not apply**

Article 34A does not apply to a person who works as an employer or employee in a financial services business, who will be subject to separate provisions. Nor does it apply to a person designated, or in circumstances specified, in Regulations made by the States.

#### **Article 34D – Failure in a financial institution to report to police officer or nominated officer**

This Article applies where information comes to a person in the course of carrying on financial services business. It also makes it an offence to fail to report money laundering. However, the reporting requirements differ from those in Article 34A in that –

- A person working in a financial services business may report either to a police officer or to a person nominated by the employer.
- A person working in a financial services business will be criminally liable not only for failing to report activities that he or she actually knew or suspected to involve money laundering, but also those that he or she should have known about or suspected.

The Article also contains defences to the offence.

It is a defence for the person to have a reasonable excuse for not disclosing the information. There is also a defence if the information is subject to privilege.

In addition, an employee in a financial services business will not be guilty of an offence if he or she shows firstly that he or she did not, in fact, know or suspect that another person is engaged in money laundering, and secondly that his or her employer failed to comply with the requirement in the Money Laundering (Jersey) Order 1999 to provide the employee with material training in the prevention and detection of money laundering.

*Article 5* adds Article 41A of the principal Law. Article 41A gives effect to Schedule 3, added below.

*Article 6* amends Article 44 of the principal Law, enabling the Royal Court to make rules of court for the purposes of Schedule 3.

*Article 7* adds Schedule 3 to the principal Law.



### **Schedule 3 – Financial information and monitoring orders**

This Schedule makes provision empowering the Bailiff, on the application of the an officer of the Force of at least the rank of chief inspector, to make orders for the provision of financial information, and the monitoring of accounts, for the purposes of investigations into money laundering.

#### **Part 3 – Enforcement of external confiscation orders**

A confiscation order is an order made, on the sentencing of an offender for any offence specified in Schedule 1 to the Law, for the recovery of the proceeds of crime.

Currently, Article 38 of the Law empowers the States, by Regulations, to provide for the registration, by the Royal Court, of confiscation orders made in certain other countries or territories, which are themselves designated in the Regulations. Article 38 also empowers the States to make Regulations regarding the enforcement, in another country or territory, of a confiscation order made in Jersey.

The purpose of the amendments in this Part is to remove the restriction confining registration of enforcement orders made in other countries or territories to such orders made in designated countries or territories. Instead, Regulations may provide for the registration of a confiscation order made anywhere outside Jersey. The following preconditions for registration, in Article 39 of the Law, will continue to apply –

- (a) the Court must be satisfied that at the time of registration the order is in force and is not subject to appeal;
- (b) the Court must be satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and
- (c) the Court must be of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.

*Article 8* amends Article 1 of the Law consequentially upon the amendment made by Article 10.

*Article 9* re-enacts the power to make Regulations regarding the enforcement, in another country or territory, of a confiscation order made in Jersey. The opportunity is taken to relocate this power to the Part of the Law concerned with the making of confiscation orders in Jersey.

*Article 10* substitutes the power to make Regulations regarding the enforcement of confiscation orders made in a country or territory outside Jersey, widening the power to confiscation orders made anywhere outside Jersey, as described above.

*Article 11* amends Article 39 of the Law, which is concerned with the registration of confiscation orders made elsewhere, consequentially upon the amendment made by Article 10.

*Article 12* has the effect that existing Regulations will remain in force until such time as they are replaced by Regulations made under the Law as amended by this draft Law.

#### **Part 4 – Miscellaneous and closing**

*Article 13* amends the long title of the principal Law consequentially upon the amendments to Article 37, below.

*Article 14* amends Article 24 of the principal Law. That Article establishes the Criminal Offences Confiscations Fund, into which confiscated proceeds of serious crime are paid. The Fund is used, amongst other things, to fulfil Jersey's international obligations under asset sharing agreements with other countries for the purposes of suppressing crime.

The present definition applies to –

- (a) agreements made by the United Kingdom on behalf of Jersey with any other State, and
- (b) agreements and other arrangements made by the Attorney General with the appropriate authority in any country or territory outside Jersey.

The amendment will extend the definition to include all agreements or arrangements made by or on behalf of Jersey. It will also extend it to cover, where appropriate, agreements for sharing assets that may have been forfeited outside Jersey.

The amendment also provides that the Criminal Offences Confiscations Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005.

*Article 15* amends Article 37 of the principal Law. The effect of the amendment is to give the Minister a general

power to prescribe measures which businesses must take for the purpose of preventing and detecting money laundering. Such measures may include a requirement for a business to disclose information to another business with which it shares common ownership, management or compliance control.

*Article 16* provides for the citation of this draft Law and for it to come into force 7 days after it is registered.





Jersey

# DRAFT PROCEEDS OF CRIME (AMENDMENT) (JERSEY) LAW 200-

## Arrangement

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### Article

#### **PART 1**

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##### INTERPRETATION

1        Interpretation

#### **PART 2**

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##### FAILURE TO DISCLOSE KNOWLEDGE OR SUSPICION OF MONEY LAUNDERING

2        Article 1 amended  
3        Article 29 amended  
4        Articles 34A to 34D inserted  
5        Article 41A inserted  
6        Article 44 amended  
7        Schedule 3 added

#### **PART 3**

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##### ENFORCEMENT OF EXTERNAL CONFISCATION ORDERS

8        Article 1 amended  
9        Article 28A inserted  
10       Article 38 substituted  
11       Article 39 amended  
12       Saving for Regulations

#### **PART 4**

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##### MISCELLANEOUS AND CLOSING

13       Long title amended  
14       Article 24 amended  
15       Article 37 amended  
16       Citation and commencement





Jersey

# DRAFT PROCEEDS OF CRIME (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend further the Proceeds of Crime (Jersey) Law 1999.

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*Adopted by the States* [date to be inserted]  
*Sanctioned by Order of Her Majesty in Council* [date to be inserted]  
*Registered by the Royal Court* [date to be inserted]

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

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## PART 1 INTERPRETATION

### 1 Interpretation

In this Law, “principal Law” means the Proceeds of Crime (Jersey) Law 1999<sup>[1]</sup>.

## PART 2

### FAILURE TO DISCLOSE KNOWLEDGE OR SUSPICION OF MONEY LAUNDERING

### 2 Article 1 amended

In Article 1(1) of the principal Law, in the definition “items subject to legal privilege” –

- (a) the words “in Articles 40 and 41” shall be deleted;
- (b) after the words “not items subject to legal privilege” there shall be inserted the words “; and ‘legal privilege’ has a corresponding meaning”.

### 3 Article 29 amended

In Article 29(1) of the principal Law, for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraph –

“(a) under any of Articles 32, 33, 34A and 34D; or”.

#### 4 Articles 34A to 34D inserted

After Article 34 of the principal Law there shall be inserted the following Articles–

##### **“34A Failure to disclose knowledge or suspicion of money laundering**

- (1) A person shall be guilty of an offence if –
  - (a) the person knows or suspects that another person is engaged in money laundering;
  - (b) the information, or other matter, on which that knowledge or suspicion is based comes to the person’s attention in the course of his or her trade, profession, business or employment; and
  - (c) the person does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his or her attention.
- (2) It is not an offence under this Article for a professional legal adviser to fail to disclose any information or other matter that comes to him or her in circumstances of legal privilege.
- (3) Where a person discloses to a police officer –
  - (a) the person’s suspicion or belief that another person is engaged in money laundering; or
  - (b) any information or other matter on which that suspicion or belief is based,the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
- (4) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine or to both.

##### **34B Statutory defences**

- (1) It is a defence to a charge of committing an offence under Article 34A that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (2) 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 Article 34A 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.
- (3) A disclosure to which paragraph (2) applies shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.

##### **34C Cases to which Article 34A does not apply**

- (1) Article 34A does not apply to information or other matter that comes to a person, as an employer or employee, in the course of the carrying on of a financial services business.
- (2) Article 34A does not apply–
  - (a) to any person designated by Regulations made by the States for the purposes of this Article; or
  - (b) in such circumstances as may be specified, to any person who falls within such category of person as may be specified in Regulations made by the States for the purposes of this Article.

- (3) Regulations made for the purposes of this Article may designate any person appearing to the States to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person specified in Regulations made for the purposes of this Article shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions.

#### **34D Failure in a financial institution to report to police officer or nominated officer**

- (1) A person commits an offence if each of the following 3 conditions is satisfied.
- (2) The first condition is that the person –
  - (a) knows or suspects; or
  - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter –
  - (a) on which the person's knowledge or suspicion is based; or
  - (b) that gives reasonable grounds for such knowledge or suspicion,comes to him or her in the course of the carrying on of a financial services business.
- (4) The third condition is that the person does not disclose the information or other matter to a police officer or to a nominated officer as soon as is practicable after it comes to him or her.
- (5) A person does not commit an offence under this Article if –
  - (a) the person has a reasonable excuse for not disclosing the information or other matter; or
  - (b) the person is a professional legal adviser and the information or other matter comes to him or her in circumstances of legal privilege.
- (6) A person does not commit an offence under this Article by failing to disclose any information or other matter that has come to his or her attention, if –
  - (a) it comes to the person in the course of his or her employment in the financial services business;
  - (b) the person carrying on the financial services business was required by an Order made under Article 37 to provide the employee with training, but had not done so;
  - (c) the training, if it had been given, would have been material; and
  - (d) the employee does not know or suspect that the other person concerned is engaged in money laundering.
- (7) In deciding whether a person has committed an offence under this Article the court must consider whether he or she has followed any relevant guidance which was at the time concerned –
  - (a) issued by the Commission; and
  - (b) published in a manner approved by the Commission as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (8) A disclosure to a nominated officer is a disclosure which –
  - (a) is made to a person nominated by the employer of the person making the disclosure to receive disclosures under this Article; and



- (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (9) Where a person to whom paragraph (1) refers discloses to a police officer or a nominated officer –
  - (a) the person's suspicion or belief that another person is engaged in money laundering; or
  - (b) any information or other matter on which that suspicion or belief is based,the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
- (10) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine or to both".

**5 Article 41A inserted**

After Article 41 of the principal Law there shall be inserted the following Article–

**“41A Financial information and monitoring**

- (1) Part 1 of Schedule 3 shall have effect in respect of the obtaining of financial information
- (2) Part 2 of Schedule 3 shall have effect in respect of account monitoring orders”.

**6 Article 44 amended**

In Article 44 of the principal Law, for the words “and 40(11)” there shall be substituted the words “, 40(11) and 41A and Schedule 3”.

**7 Schedule 3 added**

After Schedule 2 to the principal Law there shall be added the following Schedule–

**“SCHEDULE 3**

(Article 41A)

**FINANCIAL INFORMATION AND MONITORING ORDERS**

**PART 1**

(Article 41A(1))

**ORDERS FOR PROVISION OF FINANCIAL INFORMATION**

**1 Order to provide customer information**

- (1) Where an order is made under this Part of this Schedule in relation to an investigation into money laundering a police officer named in the order may require a financial services business to which the order applies to provide customer information for the purposes of the investigation.
- (2) An order under this Part of this Schedule may provide that it applies to –
  - (a) all financial services businesses;

- (b) a particular description, or particular descriptions, of financial services businesses;  
or
  - (c) a particular financial services business or particular financial services businesses.
- (3) The information shall be provided –
- (a) in such manner and within such time as the police officer may specify; and
  - (b) notwithstanding any restriction on the disclosure of information imposed by any statute or contract or otherwise.
- (4) A financial services business that fails to comply with a requirement under this paragraph is guilty of an offence.
- (5) It is a defence for a financial services business that is charged with an offence under sub-paragraph (4) to prove –
- (a) that the information required was not in the possession of the financial services business; or
  - (b) that it was not reasonably practicable for the financial services business to comply with the requirement.
- (6) a financial services business that is guilty of an offence under sub-paragraph (4) shall be liable to a fine not exceeding level 4 on the standard scale.
- (7) Where an individual is convicted of an offence under paragraph 1(4) by virtue of Article 42, the individual shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale or to both.

## **2 Who may apply for order**

An order under this Part of this Schedule may be made on the application of a police officer of at least the rank of chief inspector.

## **3 Who may make order**

An order under this Part of this Schedule may be made by the Bailiff.

## **4 Consent required for application**

An application for an order under this Part of this Schedule may only be made with the consent of the Attorney General.

## **5 Criteria for making order**

The Bailiff may only make an order under this Part of this Schedule if satisfied that –

- (a) the order is sought for the purposes of an investigation into money laundering;
- (b) there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- (c) there are reasonable grounds for believing that customer information that may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (d) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained, and to the circumstances under which the person in possession of the information holds it.

## **6 Customer information**

- (1) In this Part of this Schedule ‘customer information’ means (subject to sub-paragraph (3)) –
  - (a) information whether a business relationship exists or existed between a financial services business and a particular person (‘a customer’);
  - (b) a customer’s account number;
  - (c) a customer’s full name;
  - (d) a customer’s date of birth;
  - (e) a customer’s address or former address;
  - (f) the date on which a business relationship between a financial services business and a customer begins or ends;
  - (g) any evidence of a customer’s identity obtained by a financial services business in pursuance of or for the purposes of any legislation relating to money laundering; and
  - (h) the identity of a person sharing an account with a customer.
- (2) For the purposes of this Part of this Schedule there is a business relationship between a financial services business and a person if (and only if) –
  - (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and
  - (b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.
- (3) The States may by Regulations –
  - (a) provide for a class of information to be customer information, or to cease to be customer information, for the purposes of this Part of this Schedule; or
  - (b) extend the meaning of the expression ‘business relationship’ for the purposes of this Part of this Schedule.

## **7 Self-incrimination**

- (1) Customer information provided by a financial services business under this Schedule shall not be admissible in evidence in criminal proceedings against the financial services business or any of its employees.
- (2) Sub-paragraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(4).

## **PART 2**

(Article 41A(2))

## **ACCOUNT MONITORING ORDERS**

### **1 Account monitoring orders**

- (1) The Bailiff may, on an application made to him or her by a police officer of at least the rank of chief inspector, make an account monitoring order against a financial services business if the Bailiff is satisfied that –
  - (a) the order is sought for the purposes of an investigation into money laundering;

- (b) there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
  - (c) there are reasonable grounds for believing that account information that may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
  - (d) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained, and to the circumstances under which the person in possession of the information holds it.
- (2) An application for an order under sub-paragraph (1) may only be made with the consent of the Attorney General.
- (3) The application for an account monitoring order must state that the order is sought against the financial services business specified in the application in relation to information which –
- (a) relates to an account or accounts held at the financial services business by the person specified in the application (whether solely or jointly with another); and
  - (b) is of the description so specified.
- (4) The application for an account monitoring order may specify information relating to –
- (a) all accounts held by the person specified in the application for the order at the financial services business so specified;
  - (b) a particular description, or particular descriptions, of accounts so held; or
  - (c) a particular account, or particular accounts, so held.
- (5) An account monitoring order is an order that the financial services business specified in the application for the order must –
- (a) for the period specified in the order;
  - (b) in the manner so specified;
  - (c) at or by the time or times so specified; and
  - (d) at the place or places so specified,
- provide information of the description specified in the application to a police officer named in the order.
- (6) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

## **2 Applications**

- (1) An application for an account monitoring order may be made *ex parte* to the Bailiff in chambers.
- (2) The description of information specified in an application for an account monitoring order may be varied by the police officer who applied for the order or another police officer of at least the rank of chief inspector.

## **3 Discharge or variation**

- (1) An application to discharge or vary an account monitoring order may be made to the Bailiff by –
  - (a) the police officer who applied for the order or another police officer of at least the

rank of chief inspector; or

(b) any person affected by the order.

(2) The Bailiff may confirm, vary or discharge the order.

#### **4 Effect of orders**

(1) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) An account monitoring order has effect as if it were an order of the Court.

#### **5 Statements**

(1) A statement made by a financial services business in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) However, sub-paragraph (1) does not apply –

(a) in the case of proceedings for contempt of court;

(b) in the case of proceedings for or in respect of a confiscation order; or

(c) on a prosecution for an offence where, in giving evidence, the financial services business makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

(3) A statement may not be used by virtue of sub-paragraph (2)(c) against a financial services business unless –

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by or on behalf of the financial services business in the proceedings arising out of the prosecution.”.

## **PART 3**

### **ENFORCEMENT OF EXTERNAL CONFISCATION ORDERS**

#### **8 Article 1 amended**

In Article 1(1) of the principal Law in the definition “external confiscation order”, for the words “a designated country or territory” there shall be substituted the word “a country or territory outside Jersey”.

#### **9 Article 28A inserted**

After Article 28 of the principal Law there shall be inserted the following Article–

#### **“28A Enforcement of confiscation orders in a country or territory outside Jersey**

(1) The States may by Regulations –

(a) make such provision in connection with the taking of action in a country or territory outside Jersey with a view to satisfying a confiscation order as appears to the States to be necessary or expedient;

(b) without prejudice to the generality of sub-paragraph (a), direct that, in such circumstances as may be specified in the Regulations, proceeds which arise out of

action taken in a country or territory outside Jersey with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified in the Regulations.

- (2) Without prejudice to the generality of paragraph (1), Regulations made under it may make –
  - (a) such provision as to the evidence or proof of any matter for the purposes of such Regulations; and
  - (b) such incidental, consequential and transitional provision, as appears to the States to be necessary or expedient.”.

## **10 Article 38 substituted**

For Article 38 of the principal Law there shall be substituted the following Article–

### **“38 Recognition of external confiscation orders**

- (1) The States may by Regulations direct that, subject to such modifications as may be specified in the Regulations, this Law shall apply to –
  - (a) external confiscation orders; and
  - (b) proceedings which have been or are to be instituted in a country or territory outside Jersey and may result in an external confiscation order being made there.
- (2) Without prejudice to the generality of paragraph (1), Regulations made under it may make –
  - (a) such provision as to the evidence or proof of any matter for the purposes of such Regulations and Article 39; and
  - (b) such incidental, consequential and transitional provision, as appears to the States to be necessary or expedient.”.

## **11 Article 39 amended**

In Article 39(1) of the principal Law, the words“made in a designated country or territory” shall be deleted.

## **12 Saving for Regulations**

- (1) Regulations made under Article 38 of the principal Law which are in force immediately before this Law comes into force shall, to the extent that they make provision regarding the taking of action with a view to satisfying a confiscation order, remain in force until revoked by further Regulations made under Article 28A as inserted by this Law.
- (2) Regulations made under Article 38 of the principal Law which are in force immediately before this Law comes into force shall, to the extent that they make provision for the application of the principal Law to external confiscation orders, remain in force until revoked by further Regulations made under Article 38 as substituted by this Law.

## **PART 4**

### **MISCELLANEOUS AND CLOSING**

### 13 Long title amended

In the long title of the principal Law, for the words “forestall and prevent” there shall be substituted the words “forestall, prevent and detect”.

### 14 Article 24 amended

- (1) In Article 24 of the principal Law –
  - (a) in paragraph (2)(b), for the words “assets-sharing arrangement” there shall be substituted the words “asset sharing agreement”;
  - (b) in paragraph (4)(b), for the words “assets-sharing arrangements” there shall be substituted the words “asset sharing agreements”;
  - (c) in paragraph (8), for the words “assets-sharing arrangement” there shall be substituted the words “asset sharing agreement”.
- (2) In Article 24 of the principal Law, after paragraph (3) there shall be inserted the following paragraph –

“(3A) The Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005<sup>[2]</sup>.”.

- (3) For Article 24(8) of the principal Law, there shall be substituted the following paragraph–

“(8) In this Article, ‘asset sharing agreement’ means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere.”.

### 15 Article 37 amended

- (1) In the heading to Article 37 of the principal Law, for the words “forestall and prevent” there shall be substituted the words “prevent and detect”.
- (2) For Article 37(1) to (3) of the principal Law there shall be substituted the following paragraphs –

“(1) The Minister shall, by Order, prescribe measures to be taken (including measures not to be taken) by persons who carry on financial services business, for the purposes of preventing and detecting money laundering.

(1A) Without prejudice to the generality of paragraph (1), such measures may include–

- (a) identification procedures;
- (b) record keeping procedures;
- (c) internal reporting procedures; and
- (d) training procedures,

to be maintained by persons who carry on financial services business.

(2) An Order made under this Article –

- (a) may specify supervisory authorities for the purposes of the Order;
- (b) may authorize or require any person who acquires information in the course of the application of any procedure under any such Order, or in the course of carrying out any function under any such Order, or under any other enactment to which the Order refers, to disclose that information to a police officer, the Commission or any person or institution with whom that person shares common ownership, management or compliance control; and

- (c) may make such other provision as is reasonably necessary or incidental to the purposes of the Order.
- (3) No disclosure in accordance with an Order made under this Article to any person mentioned in paragraph (2)(b) shall be treated as a breach of any restriction or disclosure imposed by any enactment or contract or otherwise or involve the person making it in liability of any kind.”.

## **16 Citation and commencement**

This Law may be cited as the Proceeds of Crime (Amendment) (Jersey) Law 200 and shall come into force 7 days after it is registered.



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[1]

*chapter 08.780*

[2]

*chapter 24.900*