

GUERNSEY STATUTORY INSTRUMENT

2013 No

**The Criminal Justice (Proceeds of Crime) (Financial
Services Businesses) (Bailiwick of Guernsey) (Amendment)
Regulations, 2013**

<i>Made</i>	<i>25th March, 2013</i>
<i>Coming into operation</i>	<i>28th March, 2013</i>
<i>Laid before the States</i>	<i>, 2013</i>

THE POLICY COUNCIL, in exercise of the powers conferred on it by sections 49 and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a hereby makes the following Regulations -

Amendment of regulation 3.

1. For regulation 3 of the Principal Regulations, substitute -

"Risk assessment and mitigation.

3. (1) A financial services business must -

(a) carry out and document a suitable and

^a Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005 and No. XV of 2007; Recueil d'Ordonnances Tome XXVIII, p. 266; Tome XXIX, pp. 112 and 406; Tome XXXII, p. 666; Ordinance No. XXXVII of 2008; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007 and G.S.I. No. 48 of 2008 and certain sections of the Law are modified in their application to external confiscation orders by Recueil d'Ordonnances Tome XXVIII, p. 274.

sufficient money laundering and terrorist financing business risk assessment which is specific to the financial services business -

- (i) as soon as reasonably practicable after these Regulations come into force, or
 - (ii) in the case of a financial services business which only becomes such on or after the date these Regulations come into force, as soon as reasonably practicable after it becomes such a business, and
- (b) regularly review its business risk assessment, at a minimum annually, so as to keep it up to date and, where, as a result of that review, changes to the business risk assessment are required, it must make those changes.

(2) A financial services business must -

- (a) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction,
- (b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up

to date and, where changes to that risk assessment are required, it must make those changes, and

- (c) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.

(3) A financial services business must have regard to -

- (a) any relevant rules and guidance in the Handbook, and
- (b) any notice or instruction issued by the Commission under the Law,

in determining, for the purposes of these Regulations, what constitutes a high or low risk."

Amendment of regulation 5.

2. In regulation 5(4) of the Principal Regulations, omit "who was physically present".

Amendment of regulation 6.

3. In regulation 6 of the Principal Regulations -

- (a) in paragraph (1), for "3(1)(c) substitute "3(2)(a)", and

- (b) in paragraph (2), omit subparagraph (b).

Amendment of regulation 13.

4. In regulation 13(2)(c) of the Principal Regulations for "rules or guidance", substitute "rules, guidance, instructions, notices or other similar instruments".

Amendment of regulation 19.

5. In regulation 19(1) of the Principal Regulations -

- (a) in the definition of "beneficial owner" -

(i) in subparagraph (b) immediately before "trust", insert, "foundation or", and

(ii) for item (ii), substitute -

"(ii) any other person who benefits from that foundation or trust or other legal arrangement,"

- (b) for the definition of "business relationship", substitute-

"business relationship" means a business, professional or commercial relationship between a financial services business and a customer which is expected by the financial services business, at the time when contact is established, to have an element of duration,"

(c) for the definition of "Financial Action Task Force Recommendations on Money Laundering", substitute -

"Financial Action Task Force Recommendations on Money Laundering" means the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force as revised or reissued from time to time,"

- (d) immediately after the definition of "financial services business", insert the following definitions -

"foundation" means -

- (a) a foundation created under the Foundations (Guernsey) Law, 2012 or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and howsoever named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official

described in subparagraph (a),

"founder" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a founder within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person corresponding to a founder described in subparagraph (a),",
- (e) in the definition of "relevant enactments" for subparagraphs (f) and (g), substitute -
 - "(f) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011,
 - (g) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011,"
- (f) in the definition of "terrorist financing" in subparagraph (a), immediately after "Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011", insert "
", or section 2 or 3 of the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011", and
- (g) in the definition of "underlying principal" for subparagraph (a), substitute -

"(a) is a settlor, trustee, protector or enforcer of a trust, or a founder or foundation official of a foundation which is the customer or the beneficiaries of which are the beneficial owners, or".

Interpretation.

6. (1) In these Regulations "the **Principal Regulations**" means the The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007^b.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

7. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2013.

Commencement.

8. These Regulations come into force on the 28th March, 2013.

^b G.S.I. No. 33 of 2007; amended by Order in Council No. XV of 2008; G.S.I. No. 30 of 2009 and G.S.I. No. 13 of 2010.

^c Ordres en Conseil Vol. XIII, p. 355.

Dated this 25th day of March, 2013



DEPUTY P A HARWOOD
Chief Minister

For and on behalf of the Policy Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 ("the 2007 Regulations"). In particular, they amend the provisions of the 2007 Regulations relating to the requirement to undertake a suitable and sufficient money laundering and terrorist financing business risk assessment and to include specific reference to foundations.

These Regulations come into force on the 28th March, 2013