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GUERNSEY STATUTORY INSTRUMENT2007 No.33

**The Criminal Justice (Proceeds of Crime) (Financial
Services Businesses) (Bailiwick of Guernsey)
Regulations, 2007^a**

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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^a Amended by Order in Council No. ** of 2008 (Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008) and Guernsey Statutory Instrument No. ** of 2008 (The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

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**The Criminal Justice (Proceeds of Crime) (Financial
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Regulations, 2007**

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GUERNSEY STATUTORY INSTRUMENT2007 No.33

**The Criminal Justice (Proceeds of Crime) (Financial
Services Businesses) (Bailiwick of Guernsey)
Regulations, 2007**

<i>Made</i>	10 th December, 2007
<i>Coming into operation</i>	15 th December, 2007
<i>Laid before the States</i>	30 th January, 2008

THE POLICY COUNCIL, in exercise of the powers conferred upon it by section 49 and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b and of all other powers enabling it in that behalf, hereby makes the following Regulations:-

PART I

INTRODUCTORY PROVISIONS AND RISK ASSESSMENT

Citation.

1. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007.

^b Order in Council No. VIII of 1999, as amended by Order in Council No. II of 2005 and No. [] of 2007, Ordinance XXVIII of 1999, Ordinance XII of 2002, G.S.I. No. 27 of 2002 and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

Commencement.

2. These Regulations shall come into force on the 15th December, 2007.

Risk assessment and mitigation.

3. (1) A financial services business must-
- (a) carry out a suitable and sufficient business risk assessment-
 - (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,
 - (b) regularly review its business risk assessment 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,
 - (c) 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,
 - (d) regularly review any risk assessment carried out under subparagraph (c) so as to keep it up to date and, where changes to that risk assessment are required, it must

make those changes, and

- (e) 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.

(2) A financial services business must have regard to any relevant rules and guidance in the Handbook in determining, for the purposes of these Regulations, what constitutes a high or low risk.

PART II CUSTOMER DUE DILIGENCE ETC.

Customer due diligence.

4. (1) A financial services business shall, subject to the following provisions of these Regulations, ensure that the steps in paragraph (3) are carried out -

- (a) when carrying out the activities in paragraphs (2)(a) and (b) and in the circumstances in paragraphs (2)(c) and (d), and

- (b) in relation to a business relationship established prior to the coming into force of these Regulations -

- (i) in respect of which there is maintained an anonymous account or an account which the financial services business knows, or has reasonable cause to suspect, is in a fictitious name, as soon as possible after the coming into force of these Regulations and in any event

before such account is used again in any way,
and

- (ii) where it does not fall within subparagraph (i) and to the extent that such steps have not already been carried out, at appropriate times on a risk-sensitive basis.

are -
(2) The activities and circumstances referred to in paragraph (1)

- (a) establishing a business relationship,
- (b) carrying out an occasional transaction,
- (c) where the financial services business knows or suspects or has reasonable grounds for knowing or suspecting -
 - (i) that, notwithstanding any exemptions or thresholds pursuant to these Regulations, any party to a business relationship is engaged in money laundering or terrorist financing, or
 - (ii) that it is carrying out a transaction on behalf of a person, including a beneficial owner or underlying principal, who is engaged in money laundering or terrorist financing, and
- (d) where the financial services business has doubts about the veracity or adequacy of previously obtained identification data.

- (3) The steps referred to in paragraph (1) are that -
- (a) the customer shall be identified and his identity verified using identification data,
 - (b) any person purporting to act on behalf of the customer shall be identified and his identity and his authority to so act shall be verified,
 - (c) the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer,
 - (d) a determination shall be made as to whether the customer is acting on behalf of another person and, if the customer is so acting, reasonable measures shall be taken to obtain sufficient identification data to identify and verify the identity of that other person,
 - (e) information shall be obtained on the purpose and intended nature of each business relationship, and
 - (f) a determination shall be made as to whether the customer, beneficial owner and any underlying principal is a politically exposed person.
- (4) A financial services business must have regard to any relevant

rules and guidance in the Handbook in determining, for the purposes of this regulation and regulation 5, what constitutes reasonable measures.

Additional customer due diligence.

5. (1) Where a financial services business is required to carry out customer due diligence, it must also carry out enhanced customer due diligence in relation to the following business relationships or occasional transactions -

- (a) a business relationship or occasional transaction in which the customer or any beneficial owner or underlying principal is a politically exposed person,
- (b) a business relationship which is-
 - (i) a correspondent banking relationship, or
 - (ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one financial services business to another,
- (c) a business relationship or an occasional transaction -
 - (i) where the customer is established or situated in a country or territory that does not apply or insufficiently applies the Financial Action Task Force Recommendations on Money Laundering, or
 - (ii) which the financial services business considers

to be a high risk relationship, taking into account any notices or warnings issued from time to time by the Commission, and

- (d) a business relationship or an occasional transaction which has been assessed as a high risk relationship pursuant to regulation 3(1)(c).

(2) In paragraph (1) -

- (a) **"enhanced customer due diligence"** means additional steps in relation to identification and verification to those required under regulation 4(3) including taking the following steps -

- (i) considering whether additional identification data needs to be obtained and, where the financial services business considers such data needs to be obtained, obtaining it,

- (ii) considering whether additional aspects of the customer's identity need to be verified and, where the financial services business considers such aspects need to be verified, verifying them,

- (iii) considering whether additional information is required to understand the purpose and intended nature of each business relationship, and, where the financial services business considers that additional information is so required, obtaining such information,

- (iv) considering whether it is appropriate to take reasonable measures to establish the source of any funds and of the wealth of the customer and any beneficial owner and underlying principal, and, where the financial services business considers that it is so appropriate, taking such measures,
 - (v) carrying out more frequent and more extensive ongoing monitoring in accordance with regulation 11, and
- (b) **"politically exposed person"** means -
- (i) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick including, without limitation -
 - (A) heads of state or heads of government,
 - (B) senior politicians and other important officials of political parties,
 - (C) senior government officials,
 - (D) senior members of the judiciary,
 - (E) senior military officers, and

(F) senior executives of state owned body corporates,

(ii) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph "**partner**" means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or

(iii) a close associate of such a person, including, without limitation -

(A) a person who is widely known to maintain a close business relationship with such a person, or

(B) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

(3) Where a business relationship falls within paragraph (1)(a), a financial services business must -

(a) ensure that senior management approval is obtained for establishing, or, in the case of an existing business relationship, continuing that relationship,

- (b) take reasonable measures to establish the source of any funds and of the wealth of the customer and beneficial owner and underlying principal.

(4) Where the customer was not physically present when a financial services business carried out an activity set out in regulation 4(2)(a) or (b), a financial services business must take adequate measures to compensate for the specific risk arising as a result -

- (a) when carrying out customer due diligence, and
- (b) where the activity was establishing a business relationship, when carrying out monitoring of that relationship pursuant to regulation 11.

Customer due diligence for low risk relationships.

6. (1) Where a financial services business is required to carry out customer due diligence in relation to a business relationship or occasional transaction which has been assessed as a low risk relationship pursuant to regulation 3(1)(c), it may, subject to the following provisions of this regulation -

- (a) apply reduced or simplified customer due diligence measures, or
 - (b) treat an intermediary as if it were the customer.
- (2) The discretion in paragraph (1) may only be exercised -
- (a) in accordance with the requirements set out in chapter 6 of the Handbook, and

- (b) provided that the customer and every beneficial owner and underlying principal is established or situated in the Bailiwick or a country or territory listed in Appendix C to the Handbook.

(3) For the avoidance of doubt, simplified or reduced customer due diligence shall not be applied -

- (a) where the financial services business knows or suspects or has reasonable grounds for knowing or suspecting that any party to a business relationship or any beneficial owner or underlying principal is engaged in money laundering or terrorist financing, or
- (b) in relation to business relationships or occasional transactions where the risk is other than low.

Timing of identification and verification.

7. (1) Identification and verification of the identity of any person or legal arrangement pursuant to regulations 4 to 6 must, subject to paragraph (2) and regulation 4(1)(b), be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

(2) Verification of the identity of the customer and of any beneficial owners and underlying principals may be completed following the establishment of a business relationship provided that -

- (a) it is completed as soon as reasonably practicable thereafter,
- (b) the need to do so is essential not to interrupt the normal

conduct of business, and

- (c) appropriate and effective policies, procedures and controls are in place which operate so as to manage risk.

Accounts and shell banks.

8. (1) A financial services business must, in relation to all customers-
 - (a) not set up anonymous accounts or accounts in names which it knows, or has reasonable cause to suspect, to be fictitious, and
 - (b) maintain accounts in a manner which facilitates the meeting of the requirements of these Regulations.
- (2) A financial services business must -
 - (a) not enter into, or continue, a correspondent banking relationship with a shell bank, and
 - (b) take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship where the respondent bank is known to permit its accounts to be used by a shell bank.
- (3) In this regulation -
 - (a) **"consolidated supervision"** means supervision by a regulatory authority of all aspects of the business of a

group of bodies corporate carried on worldwide, to ensure compliance with-

- (i) the Financial Action Task Force Recommendations on Money Laundering; and
- (ii) other international requirements,

and in accordance with the Core Principles of Effective Banking Supervision issued by the Basel Committee on Banking Supervision as revised or reissued from time to time,

- (b) **"physical presence"** means the presence of persons involved in a meaningful way in the running and management of the bank which, for the avoidance of doubt, is not satisfied by the presence of a local agent or junior staff, and
- (c) **"shell bank"** means a bank that has no physical presence in the country or territory in which it is incorporated and licensed and which is not a member of a group of bodies corporate which is subject to effective consolidated supervision.

Non-compliance with customer due diligence measures etc.

9. Where a financial services business can not comply with any of regulation 4(3)(a) to (d) it must -

- (a) in the case of an existing business relationship, terminate that business relationship,

- (b) in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the customer, and
- (c) consider whether a disclosure must be made pursuant to Part I of the Disclosure Law^c or section 15 or 15A of the Terrorism Law^d.

Introduced business.

10. (1) In the circumstances set out in paragraph (2), a financial services business may accept a written confirmation of identity and other matters from an introducer in relation to the requirements of regulation 4(3)(a) to (e) provided that -

- (a) the financial services business also requires copies of identification data and any other relevant documentation to be made available by the introducer to the financial services business upon request and without delay, and
- (b) the introducer, subject to limited exceptions provided for in chapter 4 of the Handbook, keeps such identification data and documents.

(2) The circumstances referred to in paragraph (1) are that the

^c Approved by resolution of the States on 30th May 2007.

introducer -

- (a) is **an Appendix C business**, or
- (b) is either an overseas branch of, or a member of the same group of bodies corporate as, the financial services business with which it is entering into the business relationship ("**receiving financial services business**"), and -
 - (i) the ultimate parent body corporate of the group of bodies corporate of which both the introducer and the receiving financial services business are members, falls within paragraph (2)(a), and
 - (ii) the introducer and the receiving financial services business are subject to effective policies, procedures and controls on countering money laundering and terrorist financing of that group of bodies corporate.

(3) Notwithstanding paragraph (1), where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of regulation 4 remains with the receiving financial services business.

PART III

ENSURING COMPLIANCE AND RECORD KEEPING

^d Order in Council No. XVI of 2002 as amended by Order in Council No. XIII of 2006 and Ordinance No. [] of 2007.

Monitoring transactions and other activity.

11. (1) A financial services business shall perform ongoing and effective monitoring of any existing business relationship, which shall include-

- (a) reviewing identification data to ensure it is kept up to date and relevant in particular for high risk relationships or customers in respect of whom there is a high risk,
- (b) scrutiny of any transactions or other activity, paying particular attention to all -
 - (i) complex transactions,
 - (ii) transactions which are both large and unusual, and
 - (iii) unusual patterns of transactions, which have no apparent economic purpose or no apparent lawful purpose, and
- (c) ensuring that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship.

(2) The extent of any monitoring carried out under this regulation and the frequency at which it is carried out shall be determined on a risk sensitive basis including whether or not the business relationship is a high risk relationship.

Reporting suspicion.

12. A financial services business shall -

- (a) appoint a person of at least management level as the money laundering reporting officer and provide the name and title of that person to the Commission and the **Financial Intelligence Service** as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment,
- (b) nominate another person to receive disclosures, under Part I of the Disclosure Law and section 15 of the Terrorism Law ("nominated officer"), in the absence of the money laundering reporting officer, and ensure that any relevant employee is aware of the name of that nominated officer,
- (c) ensure that where a relevant employee, other than the money laundering reporting officer, is required to make a disclosure under Part I of the Disclosure Law or section 15 of the Terrorism Law, that this is done by way of a report to the money laundering reporting officer, or, in his absence, to a nominated officer,
- (d) ensure that the money laundering reporting officer, or in his absence a nominated officer, in determining whether or not he is required to make a disclosure under Part I of the Disclosure Law or section 15A of the Terrorism Law, takes into account all relevant information,
- (e) ensure that the money laundering reporting officer, or, in his absence, a nominated officer, is given prompt access to any other information which may be of

assistance to him in considering any report, and

- (f) ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of the Disclosure Law and sections 15 and 15A of the Terrorism Law.

Employee screening and training.

13. (1) A financial services business shall maintain appropriate and effective procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence.

(2) A financial services business shall ensure that relevant employees receive comprehensive ongoing training in -

- (a) the relevant enactments, these Regulations and the Handbook,
- (b) the personal obligations of employees and their potential criminal liability under these Regulations and the relevant enactments,
- (c) the implications of non-compliance by employees with any rules or guidance made for the purposes of these Regulations, and
- (d) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing.

(3) A financial services business shall identify relevant employees who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in paragraph (2) and must provide such additional training.

Record-keeping.

14. (1) A financial services business shall keep-

- (a) a transaction document and any customer due diligence information, or
- (b) a copy thereof,

for the minimum retention period.

(2) Where a financial services business is required by any enactment, rule of law or court order to provide a transaction document or any customer due diligence information to any person before the end of the minimum retention period, the financial services business shall-

- (a) keep a copy of the transaction document or customer due diligence information until the period has ended or the original is returned, whichever occurs first, and
- (b) maintain a register of transaction documents and customer due diligence information so provided.

(3) A financial services business shall also keep records of -

- (a) any reports made to a money laundering reporting officer as referred to in regulation 12 and of any

disclosure made under Part I of the Disclosure Law or section 15 or 15A of the Terrorism Law made other than by way of a report to the money laundering reporting officer, for five years starting from-

- (i) in the case of a report or a disclosure in relation to a business relationship, the date the business relationship ceased, or
 - (ii) in the case of a report or a disclosure in relation to an occasional transaction, the date that transaction was completed,
- (b) any training carried out under regulation 13 for five years starting from the date the training was carried out,
- (c) any minutes or other documents prepared pursuant to regulation 15(c) until -
- (i) the expiry of a period of five years starting from the date they were finalised, or
 - (ii) they are superseded by later minutes or other documents prepared under that regulation,

whichever occurs later, and

- (d) its policies, procedures and controls which it is required to establish and maintain pursuant to these Regulations, until the expiry of a period of five years starting from the date that they ceased to be operative.

(4) Documents and customer due diligence information, including any copies thereof, kept under this regulation -

- (a) may be kept in any manner or form, provided that they are readily retrievable, and
- (b) must be made available promptly to any police officer, the Commission or any other person where such documents or customer due diligence information are requested pursuant to these Regulations or any relevant enactment.

Ensuring compliance, corporate responsibility and related requirements.

15. A financial services business must, in addition to complying with the preceding requirements of these Regulations -

- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,
- (b) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of these Regulations and such policy shall include provision as to the extent and frequency of such reviews,
- (c) ensure that a review of its compliance with these Regulations is discussed and minuted at a meeting of the board at appropriate intervals, and in considering

what is appropriate a financial services business must have regard to the risk taking into account -

- (i) the size, nature and complexity of the financial services business,
 - (ii) its customers, products and services, and
 - (iii) the ways in which it provides those products and services,
- (d) ensure that any of its branch offices and, where it is a body corporate, any body corporate of which it is the majority shareholder, which, in either case, is a financial services business in any country or territory outside the Bailiwick, complies there with -
- (i) the requirements of these Regulations, and
 - (ii) any requirements under the law applicable in that country or territory which are consistent with the Financial Action Task Force Recommendations on Money Laundering,

to the extent that the law of that country or territory allows and if the law of any country or territory does not so allow in relation to any requirement of the Regulations, the financial services business must notify the Commission accordingly.

PART IIIA

REQUIREMENT TO REGISTER IN CERTAIN CASES

Application of Part.

15A. This Part applies to those persons who are financial services businesses by virtue of falling within paragraphs 20 to 23 of Part I of Schedule 1 to the Law and who are also financial services businesses by virtue of falling within paragraphs 4 or 5 ("money or value transfer services") or 12 or 13 ("money or currency changing services") of the said Part I.

Requirement to register.

15B. (1) Subject to paragraph (2), a financial services business to which this Part applies must be registered by the Commission for the purposes of this Part.

(2) A financial services business which, immediately prior to the commencement of this Part, is carrying on, and continues to carry on, money or value transfer services or money or currency changing services, shall not, during a period of one month immediately following the commencement of this Part, be guilty of an offence under regulation 17(1) provided that an application for registration in accordance with regulation 15C is submitted before the expiration of that period.

[Note by the Commission – An existing regulated financial services business has until 7 October 2008 to apply for registration with the Commission.]

Application for registration.

15C. A financial services business to which this Part applies shall apply to the Commission in such form and manner as the Commission may determine; and such application shall be accompanied by a statement of-

(a) the legal name and any trading names of the applicant,

(b) its principal place of business and any other business

addresses in the Bailiwick, and

- (c) details of the type of money or value transfer services or money or currency changing services provided.

General requirements.

15D. A financial services business which has been registered under this Part must inform the Commission of any change to the information given to the Commission for the purposes of its application for registration under Regulation 15C, or to any information given to the Commission thereafter –

- (a) prior to making such a change, or
- (b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease providing money or value transfer services or money currency or changing services.

List of, and information as to, financial services businesses registered under Part IIIA.

15E. (1) The Commission shall –

- (a) establish and maintain, in such form as the Commission may determine, a list of all financial services businesses which are for the time being registered under this Part,
- (b) make available to any person, on request and on payment of such charge (if any) as the Commission

may reasonably demand to cover the cost of preparation, a copy of that list, and

(c) publish a copy of the list on the Commission's official website.

(2) The list maintained under paragraph (1) shall contain, in relation to each financial services business registered under this Part -

(a) a statement of -

(i) the legal name and any trading names of the business,

(ii) its principal place of business and any other business addresses in the Bailiwick, and

(iii) details of the type or types of financial services business (falling within paragraph 4 or 5, ("money or value transfer services") or 12 or 13 ("money or currency changing services") by virtue of which it is a financial services business, and

(b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under paragraph (1), or any particular contained in an entry in that list, is, for any reason, inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact that a particular financial services business has been registered, or has ceased to be registered, under this Part.

PART IV MISCELLANEOUS

Notification etc.

16. (1) *[Repealed by the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008]*

(2) *[Repealed by the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008]*

(3) *[Repealed by the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008]*

(4) *[Repealed by the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008]*

(5) Any person who is a financial services business by virtue of providing money or value transmission services shall maintain a current list of its agents for such services, which shall be made available to the Commission on demand.

Offences as to false and misleading information.

16A. If a person -

(a) in connection with an application for, or for the purposes of obtaining, a registration under Part IIIA of

these Regulations,

(b) in purported compliance with a requirement imposed by these Regulations, or

(c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by these Regulations,

does any of the following -

(i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or

document which is false, deceptive or misleading
in a material particular,

he is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences.

17. (1) Any person who contravenes any requirement of these Regulations shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the Uniform Scale or both.

(2) [Omitted by The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008]

(3) [Omitted by The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008]

(4) [Omitted by The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008]

Amendment to the Law.

18. (1) The Law shall be amended as follows.

(2) For Schedule 1 to the Law substitute the Schedule 1 set out in the Schedule to these Regulations.

Interpretation.

19. (1) In these Regulations, unless the context otherwise requires -

"**2002 Regulations**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002,

"**account**" means a bank account and any other business relationship between a financial services business and a customer which is of a similar nature having regard to the services offered by the financial services business,

"**appendix C business**" means –

(a) a financial services business supervised by the Commission, or

(b) a business which is carried on from –

(i) a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be a financial services business, or

(ii) the United Kingdom, the Bailiwick of

Jersey, the Bailiwick of Guernsey or the Isle of Man by a lawyer or an accountant,

and, in either case, is a business -

(A) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory,

(B) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such a business, and

(C) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (B), by the Commission or an overseas regulatory authority,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**bank**" means a person who accepts deposits, including a

person who does so in a country or territory outside the Bailiwick, in the course of carrying on a deposit-taking business within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994^e and related expressions shall be construed accordingly,

"beneficial owner" means, in relation to a business relationship or occasional transaction -

- (a) the natural person who ultimately owns or controls the customer, and
- (b) a person on whose behalf the business relationship or occasional transaction is to be or is being conducted and, in the case of a trust or other legal arrangement, this shall mean -
 - (i) any beneficiary in whom an interest has vested, and
 - (ii) any other person who appears likely to benefit from that trust or other legal arrangement,

"board" means -

- (a) the board of directors of a financial services business, where it is a body corporate, or

^e No. XIII of 1994 as amended by No. XVII and XXI of 2002, No. XVI of 2003 and [No. of 2007 and Guernsey S.I. No. of 2007.]

- (b) the senior management of a financial services business, where it is not a body corporate,

"business relationship" means a continuing arrangement between the financial services business in question and another party, to facilitate the carrying out of transactions, in the course of such financial service business -

- (a) on a frequent, habitual, or regular basis, and
- (b) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement,

"business risk assessment" means an assessment which documents the exposure of a business to money laundering and terrorist financing risks, and vulnerabilities, taking into account its -

- (a) size, nature and complexity, and
- (b) customers, products and services and the ways in which it provides those services,

"the Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^f,

^f Ordres en Conseil Vol. XXX, p. 243, Orders in Council No. XX of 1991, No. XIII of 1994, No. II of 1997, No. II of 1998 and Nos. XVII and XXI of 2002, No. XXII of 2003 and Ordinance No. XXXIV of 2005.

"correspondent banking relationship" means a business relationship which involves the provision of banking services by one bank ("**the correspondent bank**") to another bank ("**the respondent bank**"),

"customer" means a person or legal arrangement who is seeking -

- (a) to establish or has established, a business relationship with a financial services business, or
- (b) to carry out, or has carried out, an occasional transaction with a financial services business,

except that where such a person or legal arrangement is an introducer, the customer is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship,

"customer due diligence" means the steps which a financial services business is required to carry out pursuant to regulation 4(3),

"customer due diligence information" means -

- (a) identification data, and
- (b) any account files and correspondence relating to the business relationship or occasional transaction,

"Disclosure Law" means the Disclosure (Bailiwick of Guernsey) Law, 2007,

"document" includes information recorded in any form (including, without limitation, in electronic form),

"employee" means an individual working, including on a temporary basis, for a financial services business whether under a contract of employment, a contract for services or otherwise,

"enactment" includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

"enhanced customer due diligence" shall be construed in accordance with regulation 5(2)(a),

"Financial Action Task Force Recommendations on Money Laundering" means the Financial Action Task Force Recommendations on Money Laundering and the Financial Action Task Force Special Recommendations on Terrorist Financing as revised or reissued from time to time,

"Financial Intelligence Service" means the service, known by that title, comprising those police officers assigned to the service for the purpose of the receipt, analysis and dissemination within Bailiwick, and elsewhere, of disclosures which are more commonly known, or referred to, as suspicious transaction reports,

"financial services business" means any business specified in

Schedule 1 to the Law and includes, unless the context otherwise requires, a person carrying on such a business,

"Handbook" means the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing as revised or re-issued from time to time by the Commission,

"high risk relationship" means a business relationship or an occasional transaction which has a high risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"identification data" means documents which are from a reliable and independent source,

"intermediary" means -

- (a) a financial services business, or
- (b) a firm of lawyers, or estate agents, operating in Guernsey,

which is considered as being the customer of a financial services business when establishing a business relationship, or undertaking an occasional transaction, in accordance with chapter 6 of the Handbook,

"introducer" means a financial services business, lawyer or accountant who is seeking to establish or has established, on behalf of another person or legal arrangement who is its customer, a business relationship with a financial services business,

"the law" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"legal arrangement" means an express trust or any other vehicle whatsoever which has a similar legal effect,

"low risk relationship" means a business relationship or an occasional transaction which has a low risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"minimum retention period" means-

(a) in the case of any customer due diligence information -

(i) a period of five years starting from the date-

(A) where the customer has established a business relationship with the financial services business, that relationship ceased,

(B) where the customer has carried out an occasional transaction with the financial services business, that transaction was completed, or

(ii) such other longer period as the Commission may direct,

(b) in the case of a transaction document -

(i) a period of five years starting from the date that both the transaction and any related transaction were completed, or

(ii) such other longer period as the Commission may direct,

"money laundering" is any act which -

(a) constitutes an offence under section 38, 39 or 40 of the Law,

(b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^g,

(c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),

(d) constitutes aiding, abetting, counselling or procuring the commission of an offence

^g Order in Council No. VII of 2000 as amended by Order in Council No. II of 2005.

specified in paragraph (a) or (b), or

- (e) would constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

irrespective of the value of the property involved and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

"money laundering reporting officer" means a manager, partner or director -

- (a) appointed by a financial services business to have responsibility for compliance with policies, procedures and controls to forestall, prevent and detect money laundering and terrorist financing, and
- (b) nominated by a financial services business to receive disclosures under Part I of the Disclosure Law and section 15 of the Terrorism Law,

"notify" means notify in writing,

"occasional transaction" means any transaction involving more than £10,000, carried out by the financial services business in question in the course of that business, where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear

to be linked,

"police officer" has the meaning in section 51(1) of the Law,

"politically exposed person" shall be construed in accordance with regulation 5(2)(b),

"relevant employees" means any -

- (a) member of the board,
- (b) member of the management of the financial services business, and
- (c) employees whose duties relate to the financial services business,

"relevant enactments" means -

- (a) the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995^h,
- (b) the Money Laundering (Disclosure of Information) (Alderney) Law, 1998ⁱ,
- (c) the Law,

^h Order in Council No. IV of 1995.

ⁱ Order in Council No. VII of 1998.

- (d) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (e) the Money Laundering (Disclosure of Information) (Sark) Law, 2001^j,
- (f) the Terrorism (United Nations Measures) (Channel Islands) Order 2001^k,
- (g) the Al-Qaida and Taliban (United Nations Measures) (Channel Islands) Order 2002^l,
- (h) the Terrorism Law,
- (i) the Disclosure Law,
- (j) the Transfer of Funds (Guernsey) Ordinance, 2007^m,
- (k) the Transfer of Funds (Alderney) Ordinance, 2007ⁿ,
- (l) the Transfer of Funds (Sark) Ordinance, 2007,

^j Order in Council No. XXXII of 2001.

^k S.I. 2001/3363 (registered on 11th October 2001) as amended by U.K. S.I. 2002/258 and the British Overseas Territories Act, s.2(3) an Act of Parliament.

^l S.I. 2002/258 (registered on 18th February 2002) as amended by the British Overseas Territories Act 2002, s.2(3) an Act of Parliament.

^m Ordinance No. XIX of 2007.

(m) the Disclosure (Bailiwick of Guernsey) Regulations, 2007,

(n) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007,

(o) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,

and such enactments relating to money laundering and terrorist financing as may be enacted from time to time in the Bailiwick,

"**risk**" means a risk of money laundering or terrorist financing occurring and "**risk assessment**" shall be construed accordingly,

"**subordinate legislation**" means any ordinance, statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**Terrorism Law**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

"**terrorist financing**" means doing any act which -

(a) constitutes an offence under section 8, 9, 10 or 11 of the Terrorism Law and, for the purposes of

ⁿ Alderney Ordinance No. of 2007.

this definition, the "purposes of terrorism" shall include, to the extent that they do not already do so -

- (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of the Terrorism Law, or
- (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

"transaction document" means a document which is a record of a transaction carried out by a financial services business with a customer or an introducer,

"**underlying principal**" means, in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who-

- (a) is a settlor, trustee or a protector of a trust which is the customer or the beneficiaries of which are the beneficial owners, or
- (b) exercises ultimate effective control over the customer or exercises or is to exercise such control over the business relationship or occasional transaction,

and in this definition "**protector**" has the meaning in section 58 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^o.

(2) A reference to an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment.

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

Revocation.

20. The 2002 Regulations and the Criminal Justice (Proceeds of Crime)

^o Order in Council No. I of 2001, amended by No. XIV of 2003 [and No. of 2007 and Guernsey S.I. No. [] of 2007].

(Bailiwick of Guernsey) (Amendment) Regulations, 2006^q are hereby revoked.

Dated this 10th day of December , 2007

M.W. TORODE

Chief Minister

For and on behalf of the Policy Council

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

^q Guernsey S. I. No. 43 of 2006.

SCHEDULE

regulation 18

AMENDMENT TO THE LAW

"SCHEDULE 1

section 49

FINANCIAL SERVICES BUSINESSES

1. The businesses specified in Part I are financial services businesses for the purposes of this Law except where they are incidental or other activities falling within Part II, however, those businesses specified in paragraphs 2 to 19 are only financial services businesses when carried on by way of business.

PART I

BUSINESSES

2. Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting) and advancing loans against cheques).

3. Financial leasing.

4. Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).

5. Facilitating or transmitting money or value through an informal money

or value transfer system or network.

6. Issuing, redeeming, managing or administering means of payment, means of payment includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders and bankers' drafts.

7. Providing financial guarantees or commitments.

8. Trading for account of customers (by way of spot, forward, swaps, futures, options, etc.) in -

(a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),

(b) foreign exchange, exchange, interest rate or index instruments, and

(c) commodity futures, transferable securities or other negotiable instruments or financial assets, including, without limitation, bullion.

9. Participating in securities issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).

10. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.

11. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings.

12. Money broking.

13. Money changing.
14. Providing individual or collective portfolio management services or advice.
15. Providing safe custody services.
16. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.
17. Carrying on the business of a credit union.
18. Accepting repayable funds other than deposits.
19. *[Omitted by an amendment to Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as made by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008]*
20. Accepting deposits in the course of carrying on "deposit-taking business" as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994.
21. Carrying on "controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.
22. Carrying on "insurance business" as defined in the Insurance Business (Bailiwick of Guernsey) Law, 2002, or doing anything -
 - (a) which can only lawfully be done under the authority of a licence of the Commission under the Insurance

Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, or

- (b) the doing of which is specifically exempted by that Law from the requirement to hold such a licence.

23. Carrying on "regulated activities" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in circumstances where the activity is prohibited except under the authority and in accordance with the conditions of a licence granted by the Commission under section 6 of that Law (a "fiduciary licence").

PART II

INCIDENTAL AND OTHER ACTIVITIES

24. (1) Any business falling within paragraphs 2 to 19 carried out in the course of carrying on the profession of -

- (a) *[Omitted by an amendment to Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as made by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008]*

[Note by the Commission – the omission of paragraph 24(1)(a) comes into force on 8 November 2008.]

- (b) *[Omitted by an amendment to Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of*

Guernsey) Law, 1999 as made by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008]

[Note by the Commission – the omission of paragraph 24(1)(b) comes into force on 8 November 2008.]

- (c) an actuary where such business is incidental to the provision of actuarial advice or services.

(2) For the purposes of this paragraph, business is incidental to the provision of such advice or services, if -

- (a) separate remuneration is not being given for the business as well as for such advice or services,
- (b) such advice or services is not itself business falling within paragraphs 2 to 18, and
- (c) the business being carried out is incidental to the main purpose for which that advice or services is provided.

25. The carrying on of any business in Part I -

- (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business referred to in paragraphs 2 to 23, or
- (b) in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary for any

client carrying on such a business.

26. Any business falling within any of paragraphs 2, 3, 7, 9 and 11 where that business is only carried on by a body corporate ("**first company**") in the course of providing services to another body corporate -

- (a) of which the first company is the sole shareholder,
- (b) which is the first company's sole shareholder, or
- (c) which has the same sole shareholder as the first company.

27. Activities constituting the restricted activities of dealing, advising and promotion for the purposes of Schedule 2 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 provided that –

- (a) such activities are carried on by a person who is not incorporated or registered in the Bailiwick,
- (b) such activities are carried on by a person who does not maintain a physical presence in the Bailiwick,
- (c) such activities are carried on from a country or territory listed in Appendix C to the Handbook,
- (d) the conduct of such activities is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such activities, and

- (e) the conduct of such activities is supervised for compliance with the requirements referred to in item (d), by an overseas regulatory authority.

28. Any business falling within paragraph 22 which is -

- (a) carried on by a person who is licensed in the Bailiwick solely to carry on general insurance business under the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (b) carried on by a person who is not incorporated or registered in the Bailiwick,
- (c) carried on by a person who does not maintain a physical presence in the Bailiwick,
- (d) not managed in or from within the Bailiwick, and
- (e) subject to authorisation and supervision by the United Kingdom Financial Services Authority.

29. A business falling within paragraphs 2 to 18 of Part I provided that-

- (a) the total turnover of that business, plus that of any other business falling within Part I carried on by the same person, does not exceed £50,000 per annum,
- (b) no occasional transactions are carried out in the course of such business, that is to say, any transaction involving more than £10,000, where no business

relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

(c) the turnover of such business does not exceed 5% of the total turnover of the person carrying on such business,

(d) the business is ancillary, and directly related, to the main activity of the person carrying on the business,

(e) in the course of such business, money or value is not transmitted or such transmission is not facilitated by any means,

(f) the main activity of the person carrying on the business is not that of a business falling within Part I,

(g) the business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public, and

(h) the business is not carried on by a person who also carries on a business falling within paragraphs 20 to 23 of Part I."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements on financial services businesses for the purpose of forestalling and preventing money laundering and terrorist financing.

They revoke and replace the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002 ("**2002 Regulations**") which also imposed such requirements.

The new Regulations contain significant differences to the 2002 Regulations to reflect revised international recommendations relating to money laundering and terrorist financing.

In particular they contain new obligations relating to carrying out risk assessments in relation to a financial service business as a whole and each business relationship it has with a customer (regulation 3), more precise requirements relating to the identification of persons on whose behalf transactions are carried out or who have effective control over customers (regulation 4), the timing of customer due diligence (regulation 7), provisions relating to the maintenance of customer accounts and carrying on business with shell banks (regulation 8), the monitoring of business relationships (regulation 11) and ensuring compliance and corporate responsibility for compliance (regulation 15).

The Regulations also substitute the definition of "financial services business" in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (regulation 18 and the Schedule). The main changes of principle to that definition include that there is an express reference to anything that can only lawfully be done by licence or is exempted from that requirement under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002. The

provisions excluding certain incidental and other activities carried on by lawyers, accountants, actuaries and within a group of companies have been reworded and included in a new Part II to the Schedule.

Part I of the Regulations contains the requirements relating to risk assessment, Part II the requirements relating to customer due diligence including where enhanced due diligence must be carried out or where reduced or simplified due diligence may be carried out. Part III contains the requirements on financial services businesses to ensure their compliance with the Regulations, on record keeping and on internal reporting of suspicious transactions and employee training. Part IV provides for offences and penalties and makes similar provision to the 2002 Regulations by requiring specified financial services businesses, not licensed under the main financial services regulatory legislation, to notify certain information to the Guernsey Financial Services Commission; it also contains a new obligation on persons providing money or value transmission services to maintain a list of agents.

A Court must take into account rules and guidance contained in the Guernsey Financial Services Commission's Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing in determining whether a financial services business has complied with these Regulations.