

GUERNSEY STATUTORY INSTRUMENT

2008 No. 48

The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008

Made

8th September, 2008

Coming into operation

see regulation 4

Laid before the States

, 2008

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 2007 Regulations.

1. (1) The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007^b are amended as follows.

(2) In regulation 10(2)(a) (introduced business) for the words "an Appendix C financial services business" substitute "an Appendix C business".

^a Order in Council No. VIII of 1999, as amended by Order in Council No. II of 2005 and No. 33 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.

^b G.S.I. No. 33 of 2007.

(3) In regulation 12 (reporting suspicion) for the words "a police officer" substitute "the Financial Intelligence Service".

(4) After regulation 15 (ensuring compliance, corporate responsibility and related requirements) insert -

**"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.

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. "

(5) After regulation 16 (notification etc.) insert -

"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.”

(6) In regulation 17 (offences), omit paragraphs (2) to (4).

(7) In regulation 19(1) (interpretation) -

- (a) for the definition of "**appendix C financial services business**" substitute -

"**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,"

(b) in the definition of "**business risk assessment**" omit the word "when",

(c) after the definition of "**Financial Action Task Force Recommendations on Money Laundering**" insert -

"**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 the Bailiwick, and elsewhere, of disclosures which are more commonly known, or referred to, as suspicious transaction reports,"

(d) at the end of the definition of "**financial services business**" add "and includes, unless the context otherwise requires, a person carrying on such a business",

(e) in the definition of "**introducer**" for the words "a financial services business which" substitute "a financial services business, lawyer or accountant who" and for the words "another financial services business" substitute "a financial services business", and

(f) at the end of the definition of "**relevant enactment**", add -

"(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,".

Amendment of the 1999 Law.

2. (1) Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) In Part I ("businesses"), omit paragraph 19.

(3) In Part II ("incidental and other activities") -

(a) in paragraph 24(1), omit the words "financial services", and omit items (a) and (b),

(b) in paragraph 24(2)(b), omit the words "financial services" and for "to 19" substitute "to 18",

(c) in paragraph 25, for the words "financial service business" substitute "business in Part I",

(d) in paragraph 26 omit the words -

(i) "financial services", and

(ii) "or falling within paragraph 19 by virtue of it being a service carried out in relation to any such business described in those paragraphs", and

(e) at the end add -

"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."

Interpretation.

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

(2) 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 and commencement.

4. (1) These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008.

(2) These Regulations, except as specified in paragraph (3), shall come into force on the 8th September, 2008.

(3) Regulation 2(3)(a), insofar as it omits items (a) and (b) of paragraph 24(1) of Schedule 1 (exemption for lawyers and accountants carrying on incidental activities) to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, shall come into force on 8th November, 2008.

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

Dated this 8th day of September, 2008

L. S. TROTT

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

The principal amendment is to add a new Part IIIA to require financial services businesses which are regulated under the main regulatory laws and which also provide money or value changing services or money or currency changing services to register with the Guernsey Financial Services Committee ("the Commission"). The Commission is required to maintain a list and information concerning financial services businesses registered under that Part.

These Regulations also -

- (a) add a new offence at regulation 16A in relation to the provision of false or misleading information in connection with an application for registration under Part IIIA or other

requirements under the Regulations, and

- (b) amend the provisions relating to introduced business to provide for lawyers or accountants to act as introducers subject to certain conditions being met.

The opportunity has also been taken to clarify certain provisions and update references to legislation.

These Regulations also amend the definition of "financial services business" in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (regulation 2).

The main amendments are to -

- (a) delete the services businesses set out in paragraph 19 of Part I from the description of activities which are financial services business, and
- (b) amend the list of activities in Part II of the Schedule which are not financial services businesses for the purposes of the Law and the 2007 Regulations.

The existing exemption for lawyers and accountants carrying on incidental activities has been removed and new exemptions have been added for certain restricted types of business at new paragraphs 27 to 29.

The opportunity has also been taken to make other minor clarificatory amendments to the Schedule.