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GUIDANCE NOTE

SCHEDULE 2

Introduction

This Guidance Note is a summary of the Schedule 2 legislation in Jersey.

The guide will not be able to answer all of the detailed questions that clients may have and it is not intended to be comprehensive advice. The primary legislation in Jersey is the Proceeds of Crime (Jersey) Law 1999 (the “POCL”) which was amended by the Proceeds of Crime (Amendment No.6) (Jersey) Law 2022 (the “Amendment”) which came into force on 30 January 2023.

As a result of the Amendment, Schedule 2 of the POCL has been recast so that activities and operations subject to anti money laundering, countering the financing of terrorism and countering proliferation financing (“AML/CFT/CPF”) obligations align to the definitions within the Financial Action Task Force (“FATF”) standards.

As a result of the Amendment, all previous (pre-2023) scope exemptions from AML/CFT/CPF obligations and exemptions from registration have been removed resulting in the business activities in Schedule 2 widening to include activities not previously within scope.

What is Schedule 2?

The Amendment was made in response to the inspection by Moneyval, a regional body of the FATF, in 2023. Moneyval evaluates how effectively countries combat money laundering and related activities. A negative outcome from the Moneyval inspection can lead to a jurisdiction being placed on the FATF ‘grey list’ which signifies increased monitoring.

During Jersey’s previous Moneyval inspection in 2015/16, a recommendation was made to review the exemptions in the POCL ensuring that they were justified by low risk of money laundering. After careful analysis, authorities in Jersey concluded that there was insufficient evidence to justify the exemptions and so they were removed by the Amendment.

Article 36(1) of the POCL provides that Schedule 2 has effect to specify the activities and operations which when conducted by a customer as a business constitute ‘financial services business’ for the purposes of POCL (“Schedule 2 Business”).

Scope

Registration as a Schedule 2 Business is required for any customers who fall into scope and who meet all of the following criteria:

- The customer is registered in Jersey or operating from within Jersey;
- The customer undertakes “activities or operations” specified in Schedule 2;
- Those activities are ‘conducted as a business’; and
- The activities or operations are provided to a third-party customer..

Where a customer falls into scope, they are required to register with the Jersey Financial Services Commission (the “JFSC”) and undertake certain anti-money laundering (“AML”) obligations to comply with the Handbook for the Prevention and Detection of Money Laundering, the Countering of Terrorist Financing, and the Countering of Proliferation Financing (the “AML/CFT/CPF Handbook”) including having:

- A Business Risk Assessment;
- A Customer Risk Assessment;
- Policies and Procedures (including in relation to Suspicious Activity Reports);
- Customer Due Diligence;
- A Money Laundering Compliance Officer / Money Laundering Reporting Officer appointment; and
- Ongoing Monitoring over compliance arrangements through periodic governance meetings held by the controllers of the Schedule 2 business.



Activities or operations specified in Schedule 2

Financial activities captured		
Acceptance of deposits and other repayable funds from the public	Underwriting and placement of life assurance and insurance	Safe keeping, administration and safe custody services
Advice on capital structure or industrial strategy	Financial guarantees and commitments	Money transfer services and provision of means of payment
Trading (money market instruments, futures options and similar)	Portfolio management (individual and collective)	Cash/liquid securities safe keeping and administration
Money broking and currency exchange	Lending	Investing, administering or managing funds or money (payroll, debt collection and letting companies)
Funds and funds services (issuer, manager, administrator, distributor, subscription agent, purchase agent, manager or similar)	Securities issuers and servicers (the term securities is broad but does not include debt)	Provision of means of payment (credit and debit cards, traveller's cheques, money orders and electronic money or similar)
Financial leasing	Money or value transfer services	

Non-Financial businesses captured		
High value dealers (precious metals, stones and other goods receiving payments of €15,000 or more)	Virtual asset service providers (exchange, custody, administration)	Estate agents (occasionally some letting agents and property managers may fall into scope)
Casinos	Lawyers, independent legal professionals and notaries	Accountants
Tax advice	Audit and insolvency services	Investment advice

Trust Company services captured		
Acting as a trustee of an express trust (including where the trustee is a private trust company)	Acting as or arranging for another to act as a director, secretary or partner of a company, partnership or similar legal arrangement	Registered office or business address services
Acting as a formation agent	Nominee shareholder services	

'Conducted as a business', the activities or operations are provided to a customer and/or the products or services are being offered to a third party



Acting ‘as a business’ indicators include:

- i) holding out or publicly offering to conduct the activity or operation for other persons;
- ii) conducting the activity or operation for commercial purposes with the intention of earning a profit through receipt of compensation, including non-financial benefits/benefits in kind;
- iii) the level of financial compensation however received (both in terms of the quantum and as a proportion of the person’s total income) from the activity or operation is significant;
- iv) more than one Schedule 2 activity or operation is conducted;
- v) the activity or operation is conducted for more than one other person;
- vi) the person conducting the activity is not doing so in a way where the activity could be fairly described as a hobby or amateur interest; or
- vii) the person conducts the activities or operations with a view to making a profit, including where the intention is for the profit to come to someone else such as another group company.

Meeting more than one indicator is likely to be considered ‘acting as a business’.

Penalties

A customer that fails to register as a Schedule 2 Business and then carries on unauthorised Schedule 2 Business may be found to be in contravention of Article 10 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (“the Supervisory Bodies Law”) which is an offence carrying liability to imprisonment for a maximum term of 7 years and a fine.

A Schedule 2 Business which fails to comply with AML Regulations including the Money Laundering (Jersey) Order 2008 (as amended from time to time) may be subject to an unlimited fine or up to two years imprisonment (for controlling persons) or both. The level of failure will be assessed by the JFSC and penalties issued accordingly.





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