

**The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey)
Regulations, 1999**

Made: 7th December 1999
Laid before the States: 2000
Coming into operation: 1st January 2000

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred upon it by section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a hereby makes the following Regulations:-

OFFENCES AND PENALTIES

1. (1) No person shall, in the course of any financial services business carried on by him in the Bailiwick of Guernsey, form a business relationship or carry out a one-off transaction, with or for another unless -
 - (a) the person carrying on the financial services business maintains the following procedures established in relation to his business -
 - (i) identification procedures in accordance with Regulations 3 and 4 below;
 - (ii) record-keeping procedures in accordance with Regulation 5 below;
 - (iii) internal reporting procedures in accordance with Regulation 6 below; and
 - (iv) such other procedures of internal control and communication as may be appropriate for the purposes of installing money laundering avoidance procedures and preventing money laundering;
 - (b) he takes appropriate measures from time to time for the purpose of making employees whose duties relate to financial services business aware of -

^a Order in Council No. VIII of 1999

- (i) the procedures under sub-paragraph (a) above that are maintained by him in relation to the business; and
 - (ii) the enactments relating to money laundering; and
- (c) he provides those employees from time to time with training in connection with the subjects contained within Regulation 7 below.
- (2) However, an individual who does not, in the carrying on of a financial services business, employ or act in association with any other person need not maintain internal reporting procedures in accordance with Regulation 6 below.
- (3) Any person who contravenes this Regulation shall be guilty of an offence and liable –
- (a) on conviction, on indictment, to imprisonment not exceeding a term of two years or a fine or both;
 - (b) on summary conviction, to a fine not exceeding level 5 on the Uniform Scale.
- (4) In determining whether a person has complied with any of the requirements of paragraph (1) above, a court may take account of –
- (a) the Guidance Notes on the Prevention of Money Laundering issued from time to time by the Guernsey Financial Services Commission and any other guidance issued, adopted or approved by the said Commission; or
 - (b) if no such guidance applied to him, any other relevant guidance issued by a body that regulates or is representative of any financial services business carried on by that person.
2. (1) Where an offence under Regulation 1 above committed by a body corporate is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who is purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence under Regulation 1 above committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, any partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

IDENTIFICATION PROCEDURES

3. (1) A financial services business carrying on or providing services in, or from within, the Bailiwick of Guernsey shall establish and maintain procedures which require that -
- (a) any applicant for business intending to carry on activities of a type mentioned in sub-paragraph (2) of this Regulation shall produce satisfactory evidence of his identity as soon as practicable after first making contact with the financial services business (and taking account of the provisions of paragraph (4) of this Regulation);
 - (b) where satisfactory evidence of his identity is not obtained in relation to any activity mentioned in paragraph 2(a), (b) or (c) of this Regulation, that activity shall not proceed any further; and
 - (c) where satisfactory evidence of his identity is not obtained in relation to any activity mentioned in sub-paragraph (2)(d) of this Regulation, that activity shall not proceed, except in accordance with directions given for the purpose by a police officer duly authorised for that purpose.
- (2) These Regulations apply to the following activities -
- (a) the forming of a business relationship;
 - (b) a significant one-off transaction;
 - (c) two or more one-off transactions -
 - (i) which appear to any person handling the transaction on behalf of the financial services business to be linked; and
 - (ii) in respect of which the total amount payable by or to the applicant is £10,000 or more (or its equivalent at the time of the transaction in another currency); and

- (d) any one-off transaction where any person handling the transaction on behalf of the financial services business knows or suspects:
 - (i) that the applicant is engaged in money laundering; or
 - (ii) that the transaction is carried out on behalf of another person engaged in money laundering.
- (3) Evidence of identity is satisfactory if –
 - (a) it is reasonably capable of establishing that the applicant is who he claims to be; and
 - (b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained by the financial services business, that it does establish that fact.
- (4) In determining the time within which satisfactory evidence of a person's identity must be obtained in relation to any particular activity identified in sub-paragraph (2) of this Regulation, all the circumstances shall be taken into account including, in particular –
 - (a) the nature of the activity;
 - (b) the geographical location of the applicant;
 - (c) whether it is practical to obtain evidence before commitments are entered into or before money is transferred; and
 - (d) in relation to activities of a type described in sub-paragraph (2)(b) or (c) of this Regulation, the earliest stage at which there are reasonable grounds for believing that the total amount involved in the transaction or transactions is a significant one-off transaction or is two or more one-off transactions.
- 4. (1) In addition to Regulation 1 above, Regulation 4 applies where an applicant for business is or appears to be acting otherwise than as principal.
 - (2) Identification procedures maintained by financial services businesses in respect of applicants to whom this paragraph applies shall require reasonable measures to be taken (as prescribed in the Guidance Notes on the Prevention of Money Laundering issued from time to time by the Guernsey Financial Services Commission), for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

(3) In determining what constitutes reasonable measures in any particular case, regard shall be had to all the circumstances and, in particular, to the best practice which is followed in the relevant field of business.

(4) Where the applicant for business who is, or appears to be, acting as agent for a principal -

(a) is another financial services business or a person professionally qualified in financial services, the law or accountancy; and

(b) is acting in the course of business to which he is subject to regulation or supervision in Guernsey or in any other jurisdiction listed in Guidance Notes on the Prevention of Money Laundering issued from time to time by the Guernsey Financial Services Commission as being an equivalent jurisdiction;

it shall be reasonable for the financial services business to accept a written assurance from the applicant for business to the effect that evidence of the identity of the principal on whose behalf the applicant may act has been obtained, recorded and retained under procedures maintained by the applicant for business.

RECORD-KEEPING PROCEDURE

5. (1) A financial services business shall retain each essential customer document in its original form for the minimum retention period applicable to the document.

(2) A financial services business shall retain each customer document (not being an essential customer document), or a copy, for the minimum retention period applicable to the document.

(3) A financial services business shall retain (or retain a copy of) each non-customer document, the retention of which is necessary to preserve a record of the financial transaction concerned, for the minimum retention period applicable to the document.

(4) Documents retained under this Regulation shall be retained in a manner that makes their retrieval reasonably practicable.

(5) Where a financial services business is required by law to release an original of an essential customer document before the end of the minimum retention period applicable to the document, the financial services business shall –

- (a) retain a complete copy of the document until the period has ended or the original is returned, whichever occurs first; and
- (b) maintain a register of documents so released.

INTERNAL REPORTING PROCEDURES

6. A financial services business shall institute and maintain clear internal reporting procedures which –

- (1) identify a person as the reporting officer;
- (2) require that a report is made to him of any information or other matter coming to the attention of any member of staff which, in the opinion of that person, gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (3) require that any such report is considered by the reporting officer in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (4) allow the reporting officer to have access to any other information which may be of assistance to him in considering the report; and
- (5) ensure that the information or other matter contained in a report is disclosed to a police officer where the reporting officer knows or suspects that a person is engaged in money laundering.

TRAINING PROCEDURES

7. A financial services business shall have a duty to ensure that key staff receive comprehensive training in –

- (1) the relevant laws; and
- (2) vigilance policy (including vigilance systems); and
- (3) the recognition and handling of suspicious transactions; and
- (4) the personal obligations of all key staff under the relevant laws.

AMENDMENT OF THE SCHEDULE TO THE LAW

8. (1) The Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall be amended as follows –

Paragraph 2 shall be replaced with the following –

“Any person providing services of the type referred to in Paragraph 1 in the course of carrying on the profession of a lawyer unless such services are incidental to the provision of legal advice or services.”

Paragraph 3 shall be replaced with the following –

“Any person providing services of the type referred to in Paragraph 1 in the course of carrying on the profession of an accountant unless such services are incidental to the provision of accountancy advice or services.”

- (2) For the avoidance of doubt –

- (a) An activity conducted as part of advice or of a service is incidental for the purposes of Paragraphs 2 and 3, referred to in Regulation 8 (1) above, if it is carried out without separate remuneration while providing other services (being services which do not themselves constitute services of the type referred to in Paragraph 1) in the course of carrying on the profession of a lawyer or accountant as the case may be and such activity is subordinate to the main purpose for which those legal or accountancy services are provided; and
- (b) Paragraph 1 (referred to in Regulation 8 (1) above) shall not include legal or accountancy advice or legal or accountancy services provided by any person in the course of carrying on the profession (respectively) of a lawyer or accountant to any person carrying on a business of the type referred to in the aforementioned Paragraph 1.

DEFINITIONS

9. In these Regulations –

“**applicant for business**” means any party proposing to a financial services business that they enter into a business relationship or one-off transaction.

“**business relationship**” means a continuing arrangement between two or more parties at least one of whom is acting in the course of business to facilitate the carrying out of transactions between them –

- (i) on a frequent, habitual, or regular basis; and
- (ii) where the monetary value of dealings in the course of the arrangement is not known or capable of being known at the opening of an account and/or signing of a terms of business agreement and/or other entry into the relationship that triggers the requirement for verification.

“customer document” means a document relating to a customer transaction of the financial services business which is given to it by or on behalf of a customer (whether or not the document is signed by or on behalf of the customer and whether or not the document originated from the financial services business).

“essential customer document” in relation to a financial services business means a customer document which does not relate to the day-to-day operation of an account held with the financial services business but which was obtained by the financial services business during the customer verification process.

“financial services business” are those businesses so defined in section 49(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended by these Regulations.

“key staff” means any employees of a financial services business who deal with customers/clients or their transactions.

“minimum retention period” in relation to a customer document, an essential customer document or any non-customer document, means –

- (i) in the case of account opening records, a period of 5 years after the day on which the account is closed or, where an account has become dormant, 5 years from the last transaction;
- (ii) if the document relates to the opening by a person of a deposit box held by the financial services business, a period of 6 years after the day on which the deposit box ceases to be used by the person;
- (iii) in the case of account ledger records, a period of 6 years after the date on which the transaction or series of transactions is completed; or
- (iv) in any other case, the period of 3 years following the date on which the relevant transaction or series of transactions took place.

“non-customer document” is a document which is not a customer document or an essential customer document.

“one-off transaction” means any transaction carried out other than in the course of a business relationship.

“relevant laws” means –

The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988
The Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990
The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992
The Money Laundering (Disclosure of Information) (Guernsey) Law, 1995
The Money Laundering (Disclosure of Information) (Alderney) Law, 1998
The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

and such laws of a money laundering nature as may be enacted from time to time in the Bailiwick of Guernsey.

“reporting officer” means a senior manager, partner or director appointed by a financial services business to have responsibility for vigilance policy and vigilance systems, to decide whether suspicions should be reported and to report to the police if he so decides.

“significant one-off transaction” means a one-off transaction exceeding £10,000 (or currency equivalent) whether a single transaction or consisting of a series of linked one-off transactions or, in the case of an insurance contract, consisting of a series of premiums, exceeding £10,000 (or currency equivalent) in any one year.

“vigilance policy” means the policy and consequent systems, group based or local, of a financial services business to guard against –

- (i) its business (and the financial system at large) being used for money laundering; and
- (ii) the committing of an offence under the relevant laws by the financial services business itself or its key staff.

MISCELLANEOUS

10. (1) 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.
- (2) The Interpretation (Guernsey) Law, 1948 applies throughout the Bailiwick to the interpretation of these Regulations as it applies to an enactment in force in the Island of Guernsey.

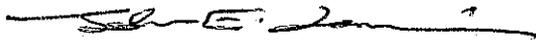
CITATION

11. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999.

COMMENCEMENT

12. These Regulations shall come into force on 1st January 2000.

Dated this seventh day of December, 1999.



J.E. Langlois
Vice-President of the States Advisory and Finance Committee
For and on behalf of the Committee

EXPLANATORY NOTE

These Regulations prescribe for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999:

the identification procedures, record-keeping procedures, internal reporting procedures and training procedures to be established and maintained by financial services businesses;

guidance which the Court shall take into account in determining whether any person has complied with a duty or requirement imposed by or in pursuance of the Regulations, being guidance which, in the opinion of the Court, is relevant to the duty or requirement in question and which has been issued or approved by the Guernsey Financial Services Commission; and

an amendment to the Schedule to the Law in respect of paragraphs 2 and 3.