

**The Criminal Justice (Proceeds of Crime)
(Bailiwick of Guernsey) (Amendment) (No. 2)
Ordinance, 2023**

THE STATES, in pursuance of their Resolution of the 2nd February, 2021^a, and in exercise of the powers conferred on them by section 53A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b and all other powers enabling them in that behalf, hereby order:-

Amendment of Law.

1. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is further amended as follows.

2. In section 50(1) after "incorporeal property" insert "and also including, for the avoidance of doubt, virtual assets within the meaning of section 17(4) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022".

3. For Schedule 1 ("financial services businesses") substitute the following Schedule –

"SCHEDULE 1

Section 49

FINANCIAL SERVICES BUSINESSES

^a Article VI of Billet d'État No. IV of 2021.

^b Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

1. (1) The businesses specified in Part I of this Schedule are "**financial services businesses**" for the purposes of this Law.

(2) However –

(a) businesses specified in paragraphs 2 to 20 of Part I of this Schedule are only financial services businesses for the purposes of this Law when carried on by way of business for or on behalf of a customer, and

(b) businesses are not financial services businesses for the purposes of this Law where they constitute incidental or other activities within the meaning of Part II of this Schedule.

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. Buying, selling or arranging the buying or selling of, or otherwise dealing

in, bullion or buying or selling postage stamps, except where –

- (a) in the case of bullion, the business consists only of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, where the value of each purchase, sale or deal does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,
- (b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and
- (c) in the case of selling postage stamps, the business consists only of selling postage stamps –
 - (i) where the value of each sale does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or
 - (ii) in the course of –
 - (A) a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of

Guernsey) Law, 2001, or

- (B) a business authorised to sell postage stamps by the holder of a licence under that Law.

6. Facilitating or transmitting money or value through an informal money or value transfer system or network.

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

8. Providing financial guarantees or commitments.

9. Trading (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.

10. Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).

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

12. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant.

13. Money broking.

14. Money changing.

15. Providing individual or collective portfolio management services or advice.

16. Providing safe custody services.

17. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.

18. Carrying on the business of a credit union.

19. Accepting repayable funds other than deposits.

20. Otherwise investing, administering or managing funds or money on behalf of other persons.

21. The acceptance of deposits in the course of carrying on deposit-taking business within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 2020.

22. The carrying on of controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 2020.

23. The carrying on of long term business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002.

24. The carrying on of business as an insurance intermediary in respect of long term business within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

25. Acting as an insurance manager within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 under the authority of a licence under that Law.

26. The carrying on –

(a) of regulated activities within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 in circumstances where the activities are prohibited except under the authority of and in accordance with the conditions of a fiduciary licence under that Law,

(b) by way of business, of the activities described in section 3(1)(g) or (ab) of that Law.

27. (1) The carrying on of –
- (a) credit business within the meaning of section 2(4) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (other than credit business comprising the provision of services ancillary to the provision of credit within the meaning of section 5 of that Law),
 - (b) financial firm business within the meaning of Part A of Schedule 1 to that Law, or
 - (c) platform and intermediation business within the meaning of section 26(4) of that Law.
- (2) The provision or carrying on, by way of business, of any of the services or activities in relation to virtual assets specified in section 17(1) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (prohibition of business of unlicensed virtual asset service providers ("VASPs")).

PART II

INCIDENTAL AND OTHER ACTIVITIES

28. (1) Any business falling within paragraphs 2 to 20 of Part I of this Schedule carried out in the course of carrying on the profession of 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 actuarial 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 are not themselves a business falling within paragraphs 2 to 20 of Part I of this Schedule, and
- (c) the business being carried out is incidental to the main purpose for which such advice or services are provided.

29. The carrying on of any business falling within Part I of this Schedule –

- (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business falling within Part I of this Schedule, 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.

30. 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, 2020 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 a relevant supervisory authority within the meaning of section 59(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.

31. Any business falling within paragraph 23, 24 or 25 of Part I of this Schedule which is –

- (a) carried on by a person who holds a licence under the Insurance Business (Bailiwick of Guernsey) Law, 2002 solely to carry on general business within the meaning of that Law,
- (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 Conduct Authority.

32. Any business falling within paragraphs 2 to 20 of Part I of this Schedule provided that –

- (a) the total turnover of that business, plus that of any other business falling within Part I of this Schedule carried on by the same person, does not exceed £50,000 per annum,
- (b) no occasional transaction is carried out in the course of that business, that is to say, any transaction involving more than £10,000 where no business relationship has been proposed or established, including any such transaction carried out in a single operation or two or more operations that appear to be linked,
- (c) the turnover of that business does not exceed 5% of the total turnover of the person carrying on the business,
- (d) that business is ancillary, and directly related, to the main activity of the person carrying on the business,
- (e) in the course of that 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 that business is not that of a business falling within Part I of this Schedule,
- (g) that 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) that business is not carried on by a person who also carries on a business falling within paragraphs 21 to 27 of Part I of this Schedule."

4. In Schedule 3 ("specified businesses") –

- (a) in paragraph 10(2)(b)(iii) for "an overseas regulatory authority" substitute "a relevant supervisory authority",
- (b) after paragraph 15 insert the following Part –

"PART IIIA

SPECIFIC PROVISIONS ABOUT VIRTUAL ASSETS

Purpose of this Part.

15A. This Part of this Schedule makes provision in respect of the transfer of virtual assets.

Expressions used in this Part.

15B. In this Part of this Schedule –

"**appropriate authorities**" means the Commission, His Majesty's Procureur, the salaried police force of the Island of Guernsey, the Guernsey Border Agency, the Director of the Economic and Financial Crime Bureau, the Financial Intelligence Unit, the Director of the Revenue Service, the Policy and Resources Committee (when acting under any enactment in respect of international sanctions measures) or any other Bailiwick of Guernsey person, authority, body or agency specified for the purposes of this Part of this Schedule in the Handbook,

"**batch transfer**" means a transfer comprised of a number of individual virtual asset transfers from one or more originators that are being sent to the same VASP, but may or may not be ultimately intended for different persons,

"**beneficiary**" means the person or legal arrangement who is identified by the originator as the receiver of the requested transfer of the virtual asset,

"**beneficiary information**" means information, or information of a class or description, specified for the purposes of this Part of this Schedule in requirements set out in the Handbook,

"**beneficiary VASP**" means the VASP which receives the transfer of the virtual asset from the originating VASP directly or through an intermediary VASP and makes the virtual asset available to the beneficiary,

"intermediary VASP" means a VASP which it is not acting on behalf of the originator or beneficiary but receives or transmits a virtual asset on behalf of the originating VASP, the beneficiary VASP or another intermediary VASP,

"originating VASP" means the VASP which initiates the transfer of the virtual asset and transfers the virtual asset upon receiving the order for a transfer of the virtual asset from or on behalf of the originator,

"originator" means the customer who allows the transfer of the virtual asset from the customer's account or, where there is no account, the person who places the order with the originating VASP to perform the transfer,

"originator information" means information, or information of a class or description, specified for the purposes of this Part of this Schedule in requirements set out in the Handbook,

"transfer" of a virtual asset means a transaction carried out on behalf of an originator through an originating VASP by electronic means with a view to making a virtual asset available to a beneficiary at a beneficiary VASP, irrespective of whether the originator and the beneficiary are the same person,

"unique transaction identifier" means a combination of letters, numbers or symbols determined by the VASP which permits the traceability of the transaction from the originator to

the beneficiary,

"VASPs" and "virtual assets" have the meanings respectively given in section 90(1) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022.

Originator and beneficiary information – duties of VASPs.

15C. (1) An originating VASP must, in respect of any virtual asset transfer –

- (a) obtain and hold required and accurate originator information and required beneficiary information,
- (b) ensure that the information specified in (a) accompanies the transfer of the virtual asset to the beneficiary VASP immediately and securely,
- (c) make the information specified in (a) available on request to the Commission and other appropriate authorities as soon as is reasonably practicable,
- (d) not execute any virtual asset transfer in respect of which (b) is not complied with, and

- (e) in the case of a transaction which would be an occasional transaction but for the sum involved being £1,000 or less, obtain and hold such information, or information of such class or description, as may be specified for the purposes of this Part of this Schedule in requirements set out in the Handbook.

(2) A beneficiary VASP must, in respect of any virtual asset transfer –

- (a) obtain and hold required and accurate beneficiary information and required originator information,
- (b) make the information specified in (a) available on request to the Commission and other appropriate authorities as soon as is reasonably practicable, and
- (c) in the case of a transaction which would be an occasional transaction but for the sum involved being

£1,000 or less, obtain and hold such information, or information of such class or description, as may be specified for the purposes of this Part of this Schedule in requirements set out in the Handbook.

(3) An intermediary VASP must, in respect of any virtual asset transfer –

- (a) take reasonable measures which are consistent with straight-through processing to identify transfers received by it that are not accompanied by the originator and beneficiary information specified in (1)(a),
- (b) without prejudice to the obligations to make disclosure imposed on specified businesses by paragraph 4(5), report to the Commission repeated failures by an originating VASP, beneficiary VASP or intermediary VASP to comply with the requirements of this Schedule as to the obtaining, holding, verification, retention, provision

and use of information in respect of virtual asset transfers,

- (c) ensure that any beneficiary information and originator information accompanying the transfer is retained with it,
- (d) subject to (e), ensure that the information specified in (c) accompanies the onward transfer that the intermediary VASP will be making,
- (e) where technical limitations prevent the information specified in (c) from accompanying an onward transfer, keep a comprehensive record of all information received from the originating VASP or another intermediary VASP for a period of not less than five years starting from the date of receipt of the virtual asset by the intermediary VASP, and
- (f) have risk-based policies for -
 - (i) determining when to reject,

suspend or otherwise refuse to execute virtual asset transfers because of information deficiencies, and

- (ii) the taking of appropriate follow-up action.

Further obligations on beneficiary VASPs.

15D. Beneficiary VASPs must, without prejudice to the provisions of paragraph 15C –

- (a) before making a virtual asset available to a beneficiary –
 - (i) monitor the completeness of the originator information, and
 - (ii) take remedial action where the information specified in (i) is incomplete,
- (b) have risk-based policies for -
 - (i) determining when to reject, suspend or otherwise refuse to execute virtual asset

transfers because of
information deficiencies,
and

(ii) the taking of appropriate
follow-up action, and

(c) without prejudice to the obligations
to make disclosure imposed on
specified businesses by paragraph
4(5), report to the Commission
repeated failures by an originating
VASP, beneficiary VASP or
intermediary VASP to comply with
the requirements of this Schedule as
to the obtaining, holding,
verification, retention, provision
and use of information in respect of
virtual asset transfers.

Batch transfers.

15E. In the case of a batch transfer, and without
prejudice to the provisions of paragraph 15C, an originating VASP
must –

(a) ensure that the batch file contains
required and accurate originator
information and required
beneficiary information,

- (b) ensure that the information specified in (a) is such as to permit the traceability within the beneficiary jurisdiction of each transaction comprised in the batch from the originator to the beneficiary, and

- (c) include the originator's account number or unique transaction identifier and/or such other information, or information of such class or description, as may be specified for the purposes of this Part of this Schedule in requirements set out in the Handbook,

and "**beneficiary jurisdiction**" in (b) means the jurisdiction in which the beneficiary VASP receives the transfer of the virtual assets in question.

No cross-border requirement for transfers, etc.

15F. For the avoidance of doubt, the provisions of this Schedule apply in respect of a transfer of virtual assets irrespective of whether the transfer or other service or activity –

- (a) is a cross-border transaction, or

- (b) is completed within the same jurisdiction (that is, the originating VASP, the beneficiary VASP and any relevant intermediary VASP are located in the Bailiwick).

Application of other provisions of this Schedule.

15G. For the avoidance of doubt, the provisions of this Part of this Schedule –

- (a) are in addition to and not in derogation from the application of the other provisions of this Schedule in respect of virtual assets (and transfers thereof) and VASPs, and
 - (b) apply to any specified business when acting in respect of a virtual asset transfer on behalf of a customer as they apply to originating VASPs, beneficiary VASPs or intermediary VASPs, as the case may be."
- (c) paragraph 16(3)(b) is repealed,
- (d) in paragraph 17 after "money or value transmission services"

insert "within the meaning of paragraph 4 of Part I of Schedule 1 or by virtue of falling within paragraph 27(2) of Part I of Schedule 1 (VASPs)",

- (e) in paragraph 21(1) –
 - (i) in item (C) of the definition of "Appendix C business" for "an overseas regulatory authority" substitute "a relevant supervisory authority",
 - (ii) in the definition of "funds" after "of all types," insert "including, for the avoidance of doubt, virtual assets",
 - (iii) in the definition of "occasional transaction" after "£10,000" insert "(or £1,000 in the case of a specified business described in paragraph 27(2) of Schedule 1 ("VASPs"))",
 - (iv) in the definition of "relevant enactments" paragraph (q) is repealed,
 - (v) after the definition of "relevant legal person" insert the following definition –

"**relevant supervisory authority**" has the meaning given in section 59(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020",

- (vi) after the definition of "transaction document" delete the

word "and" and insert the following definition –

""VASPs" and "virtual asset" : see paragraph 15B,".

5. In Schedule 4 ("registration of financial services businesses") –

(a) in paragraph 1 –

(i) for "paragraphs 20 to 23" substitute "paragraphs 21 to 27(1)",

(ii) for "paragraphs 4 or 5 ("money or value transfer services") or 12 or 13 ("money or currency changing services")" substitute –

"paragraph 4 or 6 (money service business or money or value transfer services) or 13 or 14 (money broking or money changing services)",

(iii) after "of the said Part I" insert "; and this Schedule also applies to persons who are financial services businesses by virtue of falling within paragraph 27(2) of the said Part I (VASPs), whether or not they are also financial services businesses by virtue of falling within the said paragraphs 4, 6, 13 or 14".

(b) for paragraph 3(c) substitute –

"(c) details of the type of money service business or money or

value transfer services, money broking or money changing services or VASP services or activities provided or undertaken.",

- (c) in paragraph 5(2)(a)(iii) for "paragraph 4 or 5 ("money or value transfer services") or 12 or 13 ("money or currency changing services")" substitute –

"paragraph 4 or 6 (money service business or money or value transfer services), 13 or 14 (money broking or money changing services) or 27(2) (VASPs) of Part I of Schedule 1".

Extent.

6. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

7. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023.

Commencement.

8. This Ordinance shall come into force on the 7th July, 2023.