VOISIN LAW

Recent amendments to Jersey's AML/CFT/CPF Regime | 1

Recent amendments to the Proceeds of Crime (Jersey) Law 1999 (the Proceeds of Crime Law) have the scope to bring a significant number of entities that carry out business within Jersey (irrespective of whether they are located in or outside of the Island) within Jersey's regime for the prevention and detection of money- laundering, the countering of terrorist financing and the countering of proliferation financing (AML/CFT/CPF).

Background

The primary law governing AML/CFT/CPF in Jersey is the Proceeds of Crime Law. Under the Proceeds of Crime Law, it is an offence for a financial services business to fail to implement procedures to prevent and detect money laundering. Schedule 2 of the Proceeds of Crime Law lists those activities which, when conducted in the course of a business, constitute 'financial services business'. (It should be noted that express trusts do not have to be conducted as a business.) Under the Money Laundering (Jersey) Order 2008 (the Money Laundering Order), any person conducting financial services business in or from within Jersey, and any Jersey- registered legal entity carrying out such an activity or operation anywhere in the world, must have certain AML/CFT/CPF measures in place.

On 30 January 2023, a revised, wider, list of Schedule 2 activities came into force, to align the list of regulated 'financial services business' activities with the terminology used in the Financial Action Task Force (FATF) Standards. This has resulted in entities that were not previously caught by, or were exempt, now being caught by Jersey's AML/CFT/CPF regime.

What is a 'financial services business'?

There are several high level filters that can be used to determine whether an entity is a 'financial services business', namely: (1) whether any of the activities or operations specified in Schedule 2 are being conducted; and (2) if so, whether the relevant activity or operation is being undertaken 'as a business'.

The list of activities that constitute 'financial services business' are arranged in Schedule 2 under the following headings:

- Financial Institutions (FIs)

Including lending and investing, fund and security services activities, portfolio management and investing, administering or managing funds or money.

- Designated Non-Financial Businesses and Professions (DNFBPs)

Lawyers, accountants and real estate agents.

This category also includes Trust and Company Service Providers (TCSPs) including formation agents,

acting or arranging for another person to act as a director or secretary of a company and providing a registered office for a company or a partnership.

- Virtual Assets Service Providers (VASPs)

This includes token exchanges and those providing custody, administrative or other services in respect of virtual assets.

- Express Trusts

Guidance put out by the Jersey Financial Services Commission (JFSC) sets out a number of subjective factors which may support the conclusion that an activity or operation is being conducted 'as a business' but this guidance is not prescriptive or exhaustive and does not provide any definitive formula. The guidance emphasises that the activities listed in Schedule 2 should be interpreted broadly.

It is also relevant whether the activity or operation is conducted 'for or on behalf of a customer' in respect of FIs; 'to a third party' in respect of TCSPs; and 'to another natural or legal person' in respect of VASPs. If they are not, the relevant entity will not be in-scope.

In every case, the JFSC's guidance should be considered in light of the relevant entity's relationships with those for whom or on behalf of it conducts the activity or operation in question and legal advice should be sought, where appropriate. The JFSC also encourages anyone with any doubts to contact the JFSC to discuss their circumstances.

What do entities need to do?

At the most basic level, entities need to ask themselves whether they are carrying out any activities or operations falling within the scope of Schedule 2.

• Existing financial services businesses which were previously out-of-scope but have been brought in-scope by the revised Schedule 2 have until 11.59pm on 30 June 2023 to comply with the new regime

• Existing financial services businesses that were carrying on an in-scope activity on or before 29 January 2023 must file a notification with the JFSC that they intend to continue carrying on the Schedule 2 business.

• New financial services businesses or those financial services businesses that have commenced a new in-scope activity on or after 30 January 2023 must comply immediately or as soon as they commence the in-scope activity.

What does the new regime require?

Entities carrying on an in-scope activity must:

1. comply with the Money Laundering Order and the Jersey Financial Service Commission's AML/CFT/CPF Codes of Practice (unless the in-scope activity is being a trustee of an express trust otherwise than in the course of a business, in which case the entity must comply with the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016) and the obligations in the Proceeds of Crime Law applicable to a 'financial services business'.

This includes but is not limited to: (i) conducting a Business Risk Assessment and adopt and maintain AML/CFT/CPF policies and procedures; (ii) appointing a money laundering compliance officer (MLCO) to monitor compliance with these and with applicable legislation and codes of practice; and (iii) appointing a money laundering reporting officer (MLRO) to whom reports of possible money laundering may be made.

2. register with the JFSC under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the Supervisory Bodies Law) (unless the in-scope activity is being trustee of an express trust, otherwise in the course of a business); and

3. have adequate maintained and applied procedures to prevent money laundering by an 'associated person' (as defined by the new Article 35A of the Proceeds of Crime Law).

The penalties for non-compliance for both for an entity itself and its senior management are severe. For instance, carrying out unauthorised Schedule 2 business is an offence punishable by imprisonment for up to seven years and a fine.

Appointment of an "anti-money laundering service provider".

An entity falling within the scope of the revised Schedule 2 may elect to comply with its AML/CFT/CPF obligations in three ways:

- by itself;
- by engaging the services of a regulated service provider known as an "anti-money laundering service provider" (AMLSP); or
- through outsourcing within the same group or to a third party (note the provision of an MLRO and MLCO cannot be outsourced in this way).

Those entities which carry on a regulated business but are not required to register under the Supervisory Bodies Law and which have an established place of business in Jersey (other than provided by a regulated trust company business or fund services business), are not eligible to appoint an AMLSP.

The arrangements between an entity and its AMLSP should be formally documented and carefully considered both at the outset and on an ongoing basis; the majority of entities which already receive services from a Jersey regulated service provider complying with Jersey's AML/CFT/CPF regime are likely to engage that service provider to assist with these additional obligations. Nevertheless, ultimate

responsibility for compliance with the AML/CFT/CPF obligations rests with the entity itself (or, in the case of a trust or LLP, its governing body), as does the obligation to comply with applicable sections of the new Code of Practice the JFSC has published for AMLSPs and their customers.

Further Information

The JFSC has created the following page on its website with additional information to help you determine whether your entity is now in-scope:

https://www.jerseyfsc.org/industry/sectors/financial-crime-schedule-2-business/

For further information in relation to the revised scope of Jersey's AML/CFT/CPF regime or advice on any specific circumstances, please do not hesitate to contact any of the contacts listed below.

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Please note that this briefing is only intended to provide a general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.