



Jersey

## **PROCEEDS OF CRIME AND TERRORISM (TIPPING OFF – EXCEPTIONS) (JERSEY) REGULATIONS 2014**

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## **PROCEEDS OF CRIME AND TERRORISM (TIPPING OFF – EXCEPTIONS) (JERSEY) REGULATIONS 2014**

*Made*

*9th July 2014*

*Coming into force*

*4th August 2014*

**THE STATES**, in pursuance of Article 19B(2) of the Misuse of Drugs (Jersey) Law 1978<sup>1</sup>, Articles 35(5) and 42A of the Proceeds of Crime (Jersey) Law 1999<sup>2</sup>, Article 35(5) of the Terrorism (Jersey) Law 2002, and Article 51(2)(b) of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014, have made the following Regulations –

### **1 Interpretation**

(1) In these Regulations –

“1978 Law” means the Misuse of Drugs (Jersey) Law 1978;

“1999 Law” means the Proceeds of Crime (Jersey) Law 1999;

“2002 Law” means the Terrorism (Jersey) Law 2002<sup>3</sup>;

“D”, in relation to a disclosure in any specified case, means the person making the disclosure;

“document” includes a copy of a document and an electronic communication;

“JFCU” means the Joint Financial Crimes Unit of the States of Jersey Police Force;

“MLRO” means –

(a) a reporting officer; or

(b) a designated person,

as each is defined by Article 1(1) of the Money Laundering (Jersey) Order 2008<sup>4</sup>;

“protected disclosure” means a disclosure which, by virtue of Regulation 2, does not amount to the commission of an offence;

“R”, in relation to a disclosure in any specified case, means the person to whom the disclosure is made;

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“relevant person” has the meaning given by Article 1(1) of the Money Laundering (Jersey) Order 2008<sup>5</sup>;

“suspicious activity report” means a report in writing made pursuant to any of Articles 32(1), 34A(3) or 34D(9) of the 1999 Law or 18(2), 18(3), 19(3) or 21(4) of the 2002 Law.

- (2) Article 10 of the Interpretation (Jersey) Law 1954<sup>6</sup> applies in relation to these Regulations so that a word or expression used in these Regulations which also occurs in the 1978 Law, the 1999 Law or the 2002 Law shall be construed as having the same meaning in these Regulations as it is given by the Law in which it occurs.
- (3) Reference in these Regulations –
- (a) to an employee of a person includes –
    - (i) where the person is a body corporate, reference to an officer or a person who is a general partner of that body,
    - (ii) where that person is a partnership or limited liability partnership, a person who is a partner in that partnership, and
    - (iii) where that person is a limited partnership or separate limited partnership, a person who is a general partner in that partnership;
  - (b) to one person being in the same financial group as another person shall be construed in accordance with Article 16A(2) of the Money Laundering (Jersey) Order 2008.
- (4) R includes an employee of R in any of the following provisions, namely –
- (a) Regulation 4;
  - (b) paragraphs (2) (in the first place where R is mentioned) and (4) of Regulation 5; and
  - (c) paragraphs (1)(b) and (c) and (2) of Regulation 6.

## **2 Protected disclosures: general**

- (1) Subject to paragraphs (2) and (3), a disclosure which would amount to the commission of an offence under any the following provisions, namely Article 19B(1) of the 1978 Law, Article 35(2)(a) and (4)(a) of the 1999 Law or Article 35(2)(a) and (4)(a) of the 2002 Law (as the case may be), shall not amount to the commission of such an offence –
- (a) if it is made in good faith for the purpose of preventing or detecting money laundering, and –
    - (i) it falls within any of the cases specified in Regulations 3 to 7, or
    - (ii) it is otherwise made to a person who is D’s MLRO;
  - (b) if and to the extent that it is required to be made by any enactment or by the law of another jurisdiction; nor
  - (c) if and to the extent that the JFCU has given, to the person making the disclosure, permission in writing for the disclosure to be made.

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- (2) A disclosure is not a protected disclosure if it is or involves any disclosure, other than one permitted by paragraph (1)(a)(ii) or (1)(b) of this Regulation or Regulation 3, of a suspicious activity report or a document which is a copy of such a report.
  - (3) A disclosure to which either of Articles 4 or 5 would otherwise apply is not a protected disclosure if, being made by a person other than the original reporter, it reveals the original reporter's identity.
  - (4) In paragraph (3), "original reporter" refers to an individual who has duly made a disclosure falling within any of the following provisions, namely –
    - (a) Articles 32(1) or (5), 34A(3), or 34D(9) of the 1999 Law; or
    - (b) Articles 18(2) or (3), 19(3) or (10), or 21(4) of the 2002 Law.

### **3 Internal disclosures**

- (1) Subject to paragraph (2), a disclosure made by an employee of a person ("D") to another employee of the same person ("R") is a protected disclosure.
- (2) A disclosure of the kind described in paragraph (1) which is or involves a suspicious activity report, or a document which is a copy of such a report, is protected only if it is made to a person within Jersey.
- (3) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is also protected if and to the extent that it does not disclose D's identity.
- (4) In paragraph (3), a "further disclosure" refers to a disclosure made otherwise than between employees of the same person.

### **4 Disclosures within a financial group**

- (1) A disclosure made by a person who is –
  - (a) carrying on a financial services business or otherwise carrying on a trade, profession, business or employment ("D1"); or
  - (b) an employee of such a person ("D2"),is a protected disclosure if and to the extent that it is made to another person ("R") within the same financial group as D1 or with whom D1 shares common ownership, management or compliance control.
- (2) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is protected if and to the extent that it does not disclose the identity of D2.

### **5 Disclosures between relevant persons**

- (1) A disclosure made by a person who is –

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- (a) a relevant person (“D1”); or
  - (b) an employee of such a person (“D2”),
- is a protected disclosure if it is made in accordance with the requirements in paragraph (2).
- (2) The requirements mentioned in paragraph (1) are that the disclosure is made to another relevant person (“R”), and –
    - (a) relates to a person who is a customer of both D1 and R; or
    - (b) relates to a transaction, or the provision of a service, involving both D1 and R.
  - (3) For the purposes of paragraph (2) “customer”, in relation to D1, includes a former customer.
  - (4) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is also protected if and to the extent that it does not disclose –
    - (a) the identity of D1 and (as the case may be) D2; and
    - (b) if applicable, the identity of D1’s MLRO.

## **6 Disclosures to supervisory etc. bodies**

- (1) A disclosure is a protected disclosure if it is made by any person (“D”) to any of the following (“R”) –
  - (a) an officer of the Impôts, a police officer or any member of the JFCU;
  - (b) the Jersey Financial Services Commission; or
  - (c) a supervisory body other than the Jersey Financial Services Commission and designated as such by an order made under Article 6 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>7</sup>.
- (2) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is also protected if and to the extent that it does not disclose D’s identity.
- (3) In paragraph (2), a “further disclosure” refers to a disclosure made to a person other than any of those listed in paragraph (1)(a) to (c).

## **7 Disclosures by MLROs**

A further disclosure by R, being an MLRO, of a disclosure which is protected by virtue of these Regulations is a protected disclosure if and to the extent that it is made –

- (a) to any employee of D’s employer other than D; or
- (b) to any employee of R’s employer other than R, for the purpose of carrying out R’s functions in the capacity of MLRO.

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**8 Disclosures to professional advisers**

- (1) In Article 19B of the 1978 Law, for paragraph (3) there shall be substituted the following paragraph –

“(3) Paragraph (1) does not make it an offence –

- (a) for a professional legal adviser to disclose information or any other matter –
  - (i) to a client or a client’s representative in connection with giving legal advice to the client, or
  - (ii) to any person for the purpose of actual or contemplated legal proceedings;
- (b) for a person who is the client of a professional legal adviser to disclose information or any other matter to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii);
- (c) for a person who is the client of an accountant to disclose information or any other matter to that accountant, for the purpose of enabling him or her to provide any of the services mentioned in paragraph 2(1) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>8</sup>,

except where the information or other matter is disclosed with a view to furthering a criminal purpose.

- (2) In Article 35(6) of the 1999 Law, for the word “and” at the end of sub-paragraph (a) and sub-paragraph (b), there shall be substituted the following sub-paragraphs –

- “(b) is made by a person who is the client of a professional legal adviser to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii); or
- (c) is made by a person who is the client of an accountant to that accountant for the purpose of enabling him or her to provide any of the services listed in paragraph 2(1) of Part B of Schedule 2,

and is not made with a view to furthering a criminal purpose.”.

- (3) In Article 35(6) of the 2002 Law, for the word “and” at the end of sub-paragraph (a) and sub-paragraph (b), there shall be substituted the following sub-paragraphs –

- “(b) is made by a person who is the client of a professional legal adviser to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii); or
- (c) is made by a person who is the client of an accountant to that accountant for the purpose of enabling him or her to provide any of the services listed in paragraph 2(1) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>9</sup>,

and is not made with a view to furthering a criminal purpose.”.

**9 Citation and commencement**

These Regulations may be cited as the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014, and shall come into force immediately following the commencement of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014<sup>10</sup>.

**L.-M. HART**

*Deputy Greffier of the States*



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- 1* chapter 08.680  
*2* chapter 08.780  
*3* chapter 17.860  
*4* chapter 08.780.30  
*5* chapter 08.780.30  
*6* chapter 15.360  
*7* chapter 08.785  
*8* chapter 08.780  
*9* chapter 08.780  
*10* L.7/2014