Jersey

PROCEEDS OF CRIME (AMENDMENT No. 7) (JERSEY) LAW 202-

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PROCEEDS OF CRIME (AMENDMENT No. 7) (JERSEY) LAW 202-

A LAW to amend further the Proceeds of Crime (Jersey) Law 1999.

Adopted by the States	*27th April 2022*
Sanctioned by Order of Her Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Proceeds of Crime (Jersey) Law 1999 amended

This Law amends the Proceeds of Crime (Jersey) Law 1999.

2 New Article 35A (offence of failure to prevent money laundering) inserted

After Article 35 there is inserted –

"35A Failure to prevent money laundering

(1) A financial services business (B) commits an offence, and is liable –

(a) if B is a body corporate, to a fine; or

(b) if B is not a body corporate, to imprisonment for a term not exceeding 2 years or to a fine or to both,

if a person is engaged in money laundering when acting in the capacity of a person associated with B.

(2) It is a defence for B to prove that when the money laundering occurred B adequately maintained and applied prevention procedures in relation to the activities of the person associated with B.

(3) A person is engaged in money laundering if the person engages in conduct which constitutes money laundering, whether or not the person has been convicted of an offence in relation to that conduct.

(4) A person acts in the capacity of a person associated with B if that person is –

(a) an employee of B who is acting in the capacity of an employee;

(b) an agent of B (other than an employee) who is acting in the capacity of an agent;

(c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services; or

(d) a customer of B, or an agent of a customer of B, in relation to any service performed by or on behalf of B.

(5) In paragraph (2) "prevention procedures" means procedures designed to prevent persons acting in the capacity of a person associated with B being engaged in money laundering.

(6) In determining whether B has adequately maintained and applied prevention procedures in relation to the activities of the person associated with B, the Court –

(a) may take account of any relevant Code of Practice or guidance that applies to B and is issued by the supervisory body exercising supervisory functions in respect of B; or

(b) if no such Code of Practice or guidance applies, may take into account any relevant Code of Practice or guidance that is issued by another supervisory body; or

(c) if there is no such relevant Code of Practice or guidance, may take account of any other relevant guidance issued by a body that is representative of B or any supervised business that is carried on by B.

(7) For the purposes of paragraph (4)(c) the question whether or not the person is a person who performs services for or on behalf of B is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and B.

(8) In paragraph (4)(d) "customer" has the same meaning as in Schedule 3.

(9) For the purposes of paragraph (6), "Code of Practice", "supervised business", "supervisory body" and "supervisory functions" have the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.".

3 Article 37 (procedures to prevent and detect money laundering) amended

Article 37(5) and (6) are deleted.

4 New Article 39A (offences by bodies corporate and others) inserted

After the heading of Part 5 there is inserted –

"39A Offences by bodies corporate and others

(1) In this Article –

"relevant offence" means an offence under this Law or any Order made under it that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;

"relevant person" means –

(a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;

(b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –

(i) a general partner, or

(ii) a limited partner who is participating in the management of the partnership;

(c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –

(i) a director, manager, secretary, statutory officer or other similar officer of the body corporate, and

(ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member's functions of management; and

(d) a person purporting to act in any capacity described in sub-paragraphs (a) to (c) in relation to the partnership or body that commits the relevant offence;

"statutory officer" means any person who is required to be appointed by a financial services business under an Order made under Article 37.

(2) If the relevant offence is proved to have been committed by a financial services business with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the financial services business to the penalty provided for that offence.".

5 Citation and commencement

This Law may be cited as the Proceeds of Crime (Amendment No. 7) (Jersey) Law 202- and comes into force 7 days after it is registered.