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JERSEY'S REGIME FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING, THE COUNTERING OF TERRORIST FINANCING AND THE COUNTERING OF PROLIFERATION FINANCING – UPDATE FOR DIRECTORS AND PRIVATE TRUST COMPANIES

BACKGROUND

The Proceeds of Crime (Jersey) Law 1999 (the "**Proceeds of Crime Law**") sets out Jersey's principal legislative requirements for the prevention and detection of money laundering, the countering of terrorist financing and the countering of proliferation financing ("**AML/CFT/CPF**").

The Proceeds of Crime Law was amended by the Proceeds of Crime (Amendment No.6) (Jersey) Law 2022 (the "**Proceeds of Crime Amendment**") to better align with the Financial Action Task Force ("**FATF**") Recommendations. Consequently, a recast list of Schedule 2 activities set out in the Proceeds of Crime Law – those which, when conducted in the course of a business, constitute a 'financial services business' – was brought into force resulting in relevant persons (a person carrying on a financial services business in or from within Jersey or a Jersey body corporate) that were not previously caught in Jersey's AML/CFT/CPF regime now falling into scope. Additionally, all previous scope exemptions from AML/CFT/CPF obligations and exemptions from registration with the Jersey Financial Services Commission (the "**JFSC**") pursuant to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the "**Supervisory Bodies Law**") were removed.

Critically, brought into scope pursuant to paragraph 23(2) of Schedule 2 to the Proceeds of Crime Law is any person acting, or arranging for another person to act as, a director or secretary of a company, including persons carrying on a trust company business.

EXISTING OBLIGATIONS

Following the Proceeds of Crime Amendment, a relevant person (and specifically directors) falling within the scope of Jersey's AML/CFT/CPF regime had to comply with a number of obligations, including, inter alia:

- registering with the JFSC as a Schedule 2 business pursuant to the Supervisory Bodies Law (which includes paying annual fees);
- appointing a money laundering compliance officer and a money laundering reporting officer ("**MLRO**") pursuant to Articles 7 and 8, respectively of the Money Laundering (Jersey) Order 2008 (the "**Money Laundering Order**"); and

- maintaining appropriate and consistent policies and procedures relating to, inter alia, customer due diligence measures, record-keeping, screening of employees and risk assessment and management pursuant to Article 11 of the Money Laundering Order.

TEMPORARY DISAPPLICATION

The Money Laundering (Amendment No. 13) (Jersey) Order 2023 (the “**Amendment Order**”) came into force on 28 August 2023, disapplying the above-mentioned obligations for ‘specified directors’ from the start of 1 October 2023 through to the end of 30 September 2024. Per the Amendment Order, a specified director is a person who, on or after the commencement of the Proceeds of Crime Amendment:

- (i) acted as a director of a company; and
- (ii) in doing so, conducted a business that became a financial services business pursuant to paragraph 23(2) of Schedule 2 to the Proceeds of Crime Law.

In addition to Articles 7, 8 and 11 above, the following obligations have been disapplied for the 12-month period:

- Article 9 – the option to appoint a designated person to assist the MLRO (where relevant);
- Article 9A – the option to appoint an anti-money laundering services provider (where relevant) to fulfil the obligations of a relevant person; and
- Article 11A – where appropriate, the obligation for a financial group to maintain a programme to prevent and detect money laundering.

The temporary disapplication of these obligations does not apply to directors already registered with the JFSC under the Financial Services (Jersey) Law 1998.

PRIVATE TRUST COMPANIES

Following the Proceeds of Crime Amendment, Article 2 of the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016 (the “**NPTO**”) was amended on 29 August 2023 to provide clarity on exemptions and transitional rules for Private Trust Companies (“**PTCs**”). Article 2 of the NPTO, similarly to the Proceeds of Crime Amendment, has been amended to align more closely with FATF terminology, replacing the term “by way of business” with “as a business”. The NPTO now also states that only natural persons – not legal persons – can be considered non-professional trustees under the NPTO, with this latter amendment now reflecting the original intention behind the NPTO.

These amendments now bring PTCs (and other corporate bodies) within full scope of the Proceeds of Crime Amendment as they will be considered to be “acting as a business” where they act as trustees of an express trust. As such, PTCs will have to comply with all of the obligations noted above, including the requirement to register with the JFSC under the Supervisory Bodies Law by 30 September 2023.

Our financial services and regulatory team will continue to keep you updated with any further proposed amendments to Jersey’s AML/CFT/CPF regime.

WHY CHOOSE LEXSTONE LAWYERS?

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