

CHANGES TO THE ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM FRAMEWORK

The Guernsey Financial Services Commission is responsible for administering a significant part of the Bailiwick of Guernsey's anti-money laundering ("AML") and countering the financing of terrorism ("CFT") framework. This framework covers not only financial services businesses but also prescribed businesses (firms of lawyers, accountants and estate agents registered with the Commission for AML/CFT purposes and only for AML/CFT purposes). Detailed definitions of what is a financial services business and what is a prescribed business are contained in Schedules 1 and 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the Law").

The Policy Council has now made the following regulations:

- the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008 (Schedule 1 Amendment) Regulations, 2010; and
- the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010.

In summary, the changes to Schedule 1 to the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008 and Schedule 1 to the Law are:

- the addition of postage stamp dealers and bullion dealers as financial services businesses;
- an extension of the provision on businesses who issue, redeem, manage or administer means of payment to include electronic money;

(Businesses covered by the above bullet points must register with the Commission by 31 March 2010.)

- clarification that most of the financial activities described in Schedule 1 to the Law are only considered as financial services business when carried on by way of business for or on behalf of a customer; and
- the bringing into the AML/CFT framework of fiduciary businesses carrying out two types of activity which are exempted activities in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000. These activities are where an individual is acting as a director of not more than six directorships and the activity of forming, and providing advice in respect of, a retirement annuity trust, pension scheme or a trust or a life insurance policy.

All of the new businesses (including individuals) brought into the definitions must comply with AML/CFT regulations made under the Law and the rules in the Commission's Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing by 23 April 2010.

The changes to Schedule 2 to the Law amend the description of accountancy services to include all services provided by way of business by firms (including sole practitioners) of accountants, insolvency practitioners, auditors and tax advisers acting in those capacities. Such businesses must register with the Commission by 4 October 2010 and comply with AML/CFT regulations made under the Law and the rules in the Commission's Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing by 30 October 2010.

There are exemptions from registration, which provide that businesses (with the exception of businesses providing money or value transmission services) undertaking financial services business or prescribed business on an incidental or occasional basis may not be required to register with the Commission or to meet the AML/CFT regulations and rules in the handbooks. Information on the exemption provisions can be obtained from the Policy and International Affairs Division of the Commission.

Any business in the Bailiwick which does not meet the exemption provisions and undertakes any of the activities listed in Schedules 1 and 2 to the Law whilst not being registered with the Commission is in breach of the legislation and is subject to criminal penalties.

The definitions provided for in Schedules 1 and 2, are detailed below.

DEFINITION OF FINANCIAL SERVICES BUSINESSES

1. The businesses specified in Part I of Schedule 1 to the Law are financial services businesses for the purposes of this Law except where they are incidental or other activities falling within Part II, however, those businesses specified in paragraphs 2 to 19 are only financial services businesses when carried on by way of business for or on behalf of a customer.
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).
- 4A. 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 buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, the business consists only of buying, selling or arranging for the buying or selling of bullion, 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 authorized to sell postage stamps by the holder of a licence under that Law.
5. Facilitating or transmitting money or value through an informal money or value transfer system or network.
6. Issuing, redeeming, managing or administering means of payment, means of payment includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders and bankers' drafts and electronic money.
7. Providing financial guarantees or commitments.
8. 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.

9. Participating in securities issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).
10. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.
11. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings.
12. Money broking.
13. Money changing.
14. Providing individual or collective portfolio management services or advice.
15. Providing safe custody services.
16. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.
17. Carrying on the business of a credit union.
18. Accepting repayable funds other than deposits.
19. [This paragraph has been repealed]
20. Accepting deposits in the course of carrying on "deposit-taking business" as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994.
21. Carrying on "controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.
22. Carrying on "insurance business" as defined in the Insurance Business (Bailiwick of Guernsey) Law, 2002, or doing anything which can only lawfully be done under the authority of a licence of the Commission under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
23. Carrying on "regulated activities" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in circumstances where the activity is prohibited except under the authority and in accordance with the conditions of a licence granted by the Commission under section 6 of that Law (a "fiduciary licence") or carrying on by way of business the activities described in sections 3(1)(g) or (x) of that Law.
- 23A. Otherwise investing, administering or managing funds or money on behalf of other persons.

DEFINITION OF PRESCRIBED BUSINESSES

1. Estate agency

Acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein -

- (a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

2. Legal and accountancy services

The business of lawyer, notary or other independent legal professional, when they prepare for or carry out transactions for a client in relation to the following activities -

- (a) the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest),
- (b) the management of client money, securities or other assets,
- (c) the management of bank, savings or securities accounts,
- (d) the organisation of contributions for the creation, operation, management or administration of companies, or
- (e) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities,

or the business of auditor, external accountant, insolvency practitioner or tax adviser.

For the purposes of this paragraph, an "independent legal professional" does not include legal professionals employed by -

- (a) public authorities, or
- (b) undertakings which do not by way of business provide legal services to third parties,

an "auditor" means any person who, by way of business, provides audit services pursuant to any function under an enactment,

"external accountant" means any person who, by way of business, provides accountancy services to third parties and does not include accountants employed by -

- (a) public authorities, or
- (b) undertakings which do not by way of business provide accountancy services to third parties,

"insolvency practitioner" means any person who, by way of business, provides services which include acceptance of appointment as an administrator, liquidator or receiver under the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, 1995 or any other similar enactment,

"tax adviser" means any person who, by way of business, provides advice about the tax affairs of other persons,

and, for the avoidance of doubt, in each case, does not include an employed person whose duties relate solely to the provision of audit services or accountancy services or services of a type described in the above definitions of insolvency practitioner or tax adviser, as the case may be, to his employer."