

STATES OF JERSEY



DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (JERSEY) LAW 201-

**Lodged au Greffe on 29th July 2011
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Money Laundering and Weapons Development (Directions) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

Background

In the international context, the development of counter-terrorism measures has been an important priority since 9/11. Whilst many terrorist organisations have been disabled or significantly limited in their effectiveness since then, the risk and occurrences of terrorism remain a real and constant threat. Against this background, the United Kingdom government has introduced new counter-terrorism legislation: the Counter-Terrorism Act 2008 (the “**UK Act**”). In particular, Schedule 7 of the UK Act enables Her Majesty’s Treasury (“**HM Treasury**”) to direct the financial sector to take action in order to address terrorist financing risk. Action may also be taken where there is a risk that money laundering or the development of weapons in a country or territory poses a risk to the UK’s national interests.

The ability to give a direction in respect of money laundering and terrorist financing risk supports action that has been taken by the Financial Action Task Force (the “**FATF**”) – the global standard setter for anti-money laundering and combating the financing of terrorism (AML/CFT). In order to protect the international financial system from money laundering and terrorist financing risks, and to encourage greater compliance with the AML/CFT standards, the FATF now regularly identifies jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system. As part of these efforts, the FATF calls on its members and other jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and terrorist financing risks emanating from high risk jurisdictions.

The development of measures to restrict and prevent money laundering, the financing of terrorist acts or organisations, and development of weapons, where these pose a significant risk, remains an important objective. This is particularly vital for Jersey in the area of international finance where the potential opportunity for money laundering, terrorist financing or assisting with the development or production of weapons, is a risk that must be guarded against.

The Draft Money Laundering and Weapons Development (Directions) (Jersey) Law 201- (the “**draft Law**”) is intended to introduce powers in Jersey similar to Schedule 7 of the UK Act.

Overview of the legislation

1. Power to give directions

The draft Law provides powers to the Chief Minister to give a direction to a person carrying on financial services business in or from within Jersey, or to any legal person that is established under Jersey law that is carrying on financial services business in any part of the world (hereafter referred to as a “**relevant person**”).

A direction may be given if one or more of three conditions exist –

- The FATF advises there is a risk of money laundering or terrorist financing in a country or territory;

- The Chief Minister reasonably believes that there is a risk that there is money laundering or terrorist financing in a country or territory, by the government of a country or territory, or by persons resident or incorporated in a country or territory that poses a significant risk to Jersey; or
- The Chief Minister reasonably believes that the development or production of weapons in a country or territory, or anything that facilitates such development or production, poses a significant risk to Jersey.

The Chief Minister may form a reasonable belief that there is a significant risk to the interests of Jersey where he relies on the existence of a direction issued by HM Treasury under Schedule 7 of the UK Act.

Directions can be given generally, by Order, to all relevant persons or a specific category of relevant persons. A direction may also be given to a particular relevant person who must comply with the terms of the direction.

A direction ceases to have effect, if it has not previously been revoked, after one year, although consideration may be given to renewal of a direction. A direction may be withdrawn at any time by the Chief Minister.

2. Effects of a direction

Directions can impose a range of requirements on a relevant person in relation to their transactions or business relationships with the government of, or a person connected to, a targeted country (a “**designated person**”). A direction can require a relevant person to –

- undertake enhanced customer due diligence measures;
- provide information and documents;
- limit or cease a transaction or business relationship.

The requirements to carry out enhanced customer due diligence measures are in line with similar requirements under the Money Laundering (Jersey) Order 2008. The requirements for reporting and limiting or ceasing business are new.

Enhanced customer due diligence

The meaning and application of customer due diligence is set out in Article 3 of the draft Law.

If an enhanced due diligence direction is issued, this may require a relevant person to apply enhanced due diligence measures before entering into a transaction or a business relationship with a designated person, or during a business relationship with such a person. A direction may also specify the particular due diligence measures to be undertaken.

Reporting

A direction may require a relevant person to provide such information and documents as may be specified, including periodically reporting transactions with designated persons. Each reporting direction will explain what information should be provided, to whom and when information should be sent. Businesses should also continue to submit Suspicious Activity Reports where necessary alongside any systematic reporting.

Limiting or ceasing business

A direction may specify that a relevant person must not do business with a designated person.

In some circumstances, the Chief Minister may grant general licences to exempt certain transactions or types of transaction from the requirements of the direction, or specific licences to exempt individual transactions. In practice, either the relevant person or the relevant person's customer will apply for a licence, and the Chief Minister will provide further information on how to apply for a licence when he issues a direction.

3. Impact on businesses

Based on the use to date of Schedule 7 of the UK Act, it is not anticipated that the draft Law will place any significant additional burden on relevant persons. Indeed, UK nationals and branches of UK financial institutions carrying on financial services business in or from within Jersey are already subject to obligations under the UK Act.

In practice, it is expected that the vast majority of directions given by the Chief Minister will be based on directions issued by HM Treasury, and, in addition to publicity that will be given in Jersey to directions given, relevant persons may also sign up to HM Treasury's alert system, which publicises directions made in the UK.

4. Offences

Failure to comply with a direction given under the draft Law is a serious matter and a criminal offence. However, no offence is committed where there is evidence that a relevant person failed to comply with a direction but took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with, including following any relevant guidance or code of practice.

Other offences include intentionally circumventing a direction and the provision of false information for the purpose of obtaining a licence.

5. Human Rights

The UK Act was the subject of detailed scrutiny with regard to human rights, and similar care has been taken to ensure the draft Law is fully human rights compliant.

Issues considered include the level of evidence required to issue a direction, which has been strengthened, for example, from merely 'suspicion' of a risk of money laundering to the more onerous 'reasonable belief' that there is a 'significant risk' to Jersey.

Procedural requirements to protect the rights of a person subject to a direction include –

- appropriate steps must be taken to bring the giving of the direction to the attention of recipients;
- the direction will lapse, unless it has previously been revoked, after 12 months and continuation is subject to a renewal;
- the Chief Minister must publicise when a direction is amended or ceases to have effect;

- a direction to limit or cease business may be subject to a licence to exempt certain acts in general or to exempt specific persons, subject to conditions as specified.

Any person aggrieved by a decision of the Minister may appeal to the Royal Court against that decision. The Royal Court may then make such interim or final order as it thinks fit. If it decides to set aside the Chief Minister's decision to give a direction, it can quash the direction (if given by notice) or, if made by Order, direct the Chief Minister to revoke the Order.

As outlined above, the Chief Minister may give a direction if HM Treasury has issued a direction. Where the Chief Minister relies on such a direction when giving a direction under the draft Law, then there is no right of appeal to the Royal Court and the route of appeal lies under the UK Act. However, if a direction made by HM Treasury on which the Chief Minister has relied is set aside, ceases to have effect or is revoked, the direction given in Jersey will also cease to have effect.

The Schedule to the draft Law contains provisions for rules of court in connection with proceedings under the draft Law. In particular, the draft Law includes arrangements for restricting the disclosure of evidence. Such arrangements might be necessary, for example, where, for reasons of security or if it is contrary to the public interest, it is not possible to disclose to a party to the proceedings, or to any legal representative, the full details of the reasons for a decision.

Nevertheless, in carrying out its duties, the Court cannot act inconsistently with the Human Rights Convention and rules of court also provide for arrangements in Jersey for the appointment of special counsel to represent the interests of a party or a legal representative who is excluded from proceedings or an appeal under the draft Law.

Financial and manpower implications

Implementation of the draft Law will involve administrative arrangements for the Chief Minister to give directions and grant licences. However, based on the use to date of Schedule 7 of the UK Act, it is considered unlikely that directions will be given frequently under the draft Law.

If an appeal was made by a Jersey person against a direction given by HM Treasury, it is possible that they might receive legal aid in the UK but would not receive financial support for travel and accommodation. The likelihood of such an appeal made in the UK by a Jersey person without the means to pay is remote; however, in such circumstances the States might be asked to give consideration to financial assistance.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 27th July 2011 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Money Laundering and Weapons Development (Directions) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This draft Law would allow for directions to be made in response to threats from countries or territories outside Jersey to the interests of Jersey relating to money laundering, terrorist financing or weapons development and for related and incidental purposes. A direction may be addressed to any person (“relevant person”) who carries on a financial services business.

Article 1 is an interpretation provision. In particular, “relevant activities” refer to money laundering or weapons development or both. “Money laundering” has the same meaning as in the Proceeds of Crime (Jersey) Law 1999 and includes terrorist financing.

Articles 2 and 3 define some key terms used in the draft Law, namely “beneficial ownership and control”, “customer due diligence measures” and “enhanced customer due diligence measures”. The definition “customer due diligence measures” sets out measures for identifying parties (including beneficial owners and controllers) to a transaction or a business relationship and for on-going monitoring during the course of a business relationship. “Enhanced customer due diligence measures” mean customer due diligence measures involving specific and adequate measures to compensate for the higher risk of relevant activities in a particular case.

Article 4 gives the Minister power to amend by Order any definition in Article 1, 2 or 3.

Under *Article 5* one or more of 3 conditions must exist in relation to a country or territory outside Jersey for the Minister to give a direction. The first condition is that the international body known as the Financial Action Task Force advises that measures should be taken because of the risk of money laundering. The second is that the Minister reasonably believes that the risk of money laundering is a significant risk to the interests of Jersey. The third is that the Minister reasonably believes that the development or production of weapons, or anything that facilitates such development or production, is a significant risk to Jersey.

Article 6 provides that the Minister can give a direction to a particular person by notice or can give a direction by Order to all relevant persons or persons falling within a description of relevant person specified in the Order. A direction can require a person to whom it is addressed (“recipient”) to undertake enhanced customer due diligence measures in relation to a person (“designated person”) specified in the direction; require the recipient to provide specified information or documents, or prohibit specified transactions or business relationships between the recipient and a designated person. A direction will apply to any person acting for the designated person and any person in relation to whom the designated person is a beneficial owner or controller or holding body in the same way as it applies to a designated person.

Articles 7 and 8 set out the procedural requirements for a direction. A direction (whether made by Order or by notice) will cease to have effect one year after it is made unless previously revoked.

Article 9 allows the Minister to grant a licence if a direction has been given prohibiting specified transactions or business relationships with a designated person so as to exempt specified acts from the direction. The licence may be general or granted to persons falling within a description of persons or granted to a particular person.

Article 10 makes provision for an application to the Royal Court to set aside the Minister's decision to give a direction on the grounds that it is unreasonable in all the circumstances of the case.

Article 11 provides that no application under Article 10 may be made if, in giving a direction, the Minister has relied on a direction given by HM Treasury under paragraph 1(3) or (4) of Schedule 7 to the Counter-Terrorism Act 2008, (that is grounds relating to risk to the national interests of the United Kingdom). This Article also makes provision relating to what happens when a direction given by HM Treasury ceases to have effect or has been set aside, revoked, or varied.

Article 12 and the Schedule make provision for rules of court to be made in relation to proceedings under Article 10, disclosure and the appointment of special counsel. The Royal Court or Court of Appeal, as the case may be, may appoint a person as special counsel to represent a person excluded from proceedings.

Article 13 allows information to be disclosed for the purposes of the Minister's functions under the Law or for the purpose of complying with a requirement in a direction to give information.

Article 14 makes failure to comply with a direction an offence. It also makes the provision of false information for obtaining a licence an offence. Each offence is punishable with a maximum prison term of 2 years and a fine.

Article 15 sets out how a notice under the Law is served.

Article 16 is a general provision about Regulations and Orders.

Article 17 makes consequential amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 so as to refer to the draft Law.

Article 18 sets out the title of the draft Law and provides that it will come into force 7 days after it is registered.



Jersey

DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (JERSEY) LAW 201-

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Jersey

DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (JERSEY) LAW 201-

A LAW to allow for directions to be made in response to threats from abroad to the interests of Jersey relating to money laundering, terrorist financing or weapons development and for related and incidental purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law unless the context otherwise requires –

“beneficial ownership and control” shall have the meaning in Article 2;

“biological agent” means any microbial or other biological agent;

“biological weapon” means –

- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or
- (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“chemical weapon” has the same meaning as in section 1 of the Chemical Weapons Act 1996 (c.6) of the United Kingdom as extended to Jersey by the Chemical Weapons Act 1996 (Jersey) Order 1998¹;

“Commission” means the Jersey Financial Services Commission established under the Financial Services Commission (Jersey) Law 1998²;

“Counter-Terrorism Act 2008” means the Counter-Terrorism Act 2008 (c.28) of the United Kingdom as amended from time to time;

“Court” means the Royal Court;

“customer due diligence measures” shall be construed in accordance with Article 3;

“designated person” means a person or government described in Article 6(3) in relation to whom a direction is given;

“direction” means a direction under Article 6(1) or (2);

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“enhanced customer due diligence measures” shall be construed in accordance with Article 3(9);

“financial services business” has the same meaning as in the Proceeds of Crime (Jersey) Law 1999³;

“HM Treasury” means the Commissioners of Her Majesty’s Treasury;

“Minister” means the Chief Minister;

“money laundering” has the same meaning as in the Proceeds of Crime (Jersey) Law 1999⁴;

“nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;

“one-off transaction” means a transaction which is not part of a business relationship;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by decay of radioactive material;

“recipient” or “recipient of a direction” means a person to whom a direction is given under Article 6(1) or (2);

“regulated market” means –

- (a) a regulated financial market within an EEA State, such market being included in the most recent list of regulated markets published by the European Commission on its website under Directive 2004/39/EC of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments (OJ L 145, 30.4.2004) as for the time being in force (being the list published under Article 47 of the Directive); or
- (b) a regulated financial market in a country or territory outside an EEA State, admission to which for trading purposes requires companies to be subject to disclosure obligations contained in

international standards equivalent to the disclosure obligations to which companies admitted to markets on the list described in paragraph (a) are subject;

“relevant activities” means money laundering or weapons development or both;

“relevant person” means –

- (a) a person carrying on a financial services business in or from within Jersey; or
- (b) any of the following –
 - (i) a body that is incorporated in Jersey,
 - (ii) a limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 1997⁵, or
 - (iii) a separate limited partnership that is registered under the Separate Limited Partnerships (Jersey) Law 2011⁶,

carrying on a financial services business in any part of the world;

“relevant supervisory body” has the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008⁷;

“toxin” means any toxin, whatever its origin or method of production;

“transaction” means a one-off transaction or a transaction in the course of a business relationship;

“weapons development” means the development or production of nuclear, radiological, biological or chemical weapons or the facilitation of that development or production.

2 Meaning of beneficial ownership and control

- (1) For the purposes of this Law, each of the following individuals is a beneficial owner or controller of a person (“other person”) where that other person is not an individual –
 - (a) an individual who is an ultimate beneficial owner of that other person (whether or not the individual is its only ultimate beneficial owner); and
 - (b) an individual who ultimately controls or otherwise exercises control over the management of that other person (whether the individual does so alone or with any other person or persons).
- (2) For the purposes of paragraph (1) it is immaterial whether an individual’s ultimate ownership or control is direct or indirect.
- (3) No individual is to be treated by reason of this Article as a beneficial owner of a person that is a body corporate the securities of which are listed on a regulated market.
- (4) In determining whether an individual is a beneficial owner or controller of another person, regard must be had to all the circumstances of the case, in particular the size of an individual’s beneficial ownership or degree of control having regard to the risk of that individual or that other person being involved in relevant activities.

3 Meaning of “customer due diligence measures” and “enhanced customer due diligence measures”

- (1) In this Article –
 - “customer” means a person;
 - “third party” includes a person, trust or any other legal arrangement.
- (2) “Customer due diligence measures” means, in respect of the customers of a relevant person’s financial services business, identification measures and on-going monitoring.
- (3) Identification measures are measures for –
 - (a) identifying the customer;
 - (b) determining whether the customer is acting for a third party and, if so –
 - (i) identifying that third party,
 - (ii) where the third party is a person other than an individual, understanding the ownership and control of that third party and identifying each individual who is that third party’s beneficial owner or controller,
 - (iii) where the third party is not a person –
 - (A) understanding the nature of the legal arrangement under which the third party is constituted (for example, in the case of a trust, the type of trust),
 - (B) identifying each person who falls within paragraph (8), and
 - (C) in respect of each person falling within paragraph (8) who is not an individual, understanding the ownership and control of that person and identifying each individual who is that person’s beneficial owner or controller;
 - (c) in respect of a customer who is not an individual –
 - (i) identifying any person purporting to act on behalf of the customer and verifying the authority of any person purporting so to act,
 - (ii) understanding the ownership and control structure of that customer and the provisions under which the customer can enter into contracts, or other similar legally binding arrangements, with third parties, and
 - (iii) identifying the individuals who are the customer’s beneficial owners or controllers;
 - (d) obtaining information on the purpose and intended nature of a business relationship or one-off transaction.
- (4) On-going monitoring means –
 - (a) scrutinizing transactions undertaken throughout the course of a business relationship to ensure that the transactions being conducted are consistent with the relevant person’s knowledge of the customer, including the customer’s business and risk profile

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- (such scrutiny to include, where necessary, the source of the funds); and
- (b) ensuring that documents, data or information obtained under identification measures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of the scrutiny described in sub-paragraph (a).
- (5) For the purposes of paragraph (3), identification of a person means –
 - (a) finding out the identity of that person, including that person's name and legal status; and
 - (b) obtaining evidence, on the basis of documents, data or information from a reliable and independent source that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies the person responsible for the identification of a person that the evidence does establish that fact.
 - (6) For the purposes of paragraph (3), the measures must include the assessment by the relevant person of the risk that any business relationship or one-off transaction will involve relevant activities, including obtaining appropriate information for assessing that risk.
 - (7) For the purposes of paragraph (3)(b) and (c), measures for obtaining evidence must involve reasonable measures having regard to all the circumstances of the case, including the degree of risk assessed.
 - (8) For the purposes of paragraph (3)(b)(iii), a person falls within this paragraph if –
 - (a) that person is, in relation to a trust that is the third party, a settlor or protector; or
 - (b) that person, having regard to the risk of that person being involved in relevant activities –
 - (i) has a beneficial interest in the third party, or
 - (ii) is the object of a trust power in relation to a trust that is the third party.
 - (9) “Enhanced customer due diligence measures” mean customer due diligence measures that involve specific and adequate measures to compensate for the higher risk of relevant activities in a particular case.

4 Amendment of Articles

The Minister may, by Order, amend the meaning of any word, term or expression used in any of Articles 1, 2 and 3.

5 Conditions for giving a direction

- (1) The Minister may, after consultation with the Commission and any relevant supervisory body, give a direction under Article 6 if one or more

of the following conditions are met in relation to a country or territory outside Jersey.

- (2) The first condition is that the international body known as the Financial Action Task Force has advised that measures should be taken in relation to the country or territory because of the risk that there is money laundering –
 - (a) in the country or territory;
 - (b) by the government of the country or territory; or
 - (c) by persons resident or incorporated in the country or territory.
- (3) The second condition is that the Minister reasonably believes that there is a risk that there is money laundering –
 - (a) in the country or territory;
 - (b) by the government of the country or territory; or
 - (c) by persons resident or incorporated in the country or territory,and that this poses a significant risk to the interests of Jersey.
- (4) The third condition is that the Minister reasonably believes that –
 - (a) the development or production of nuclear, radiological, biological or chemical weapons, or their means of delivery, in the country or territory; or
 - (b) the doing in the country or territory of anything that facilitates the development or production of such weapons,poses a significant risk to the interests of Jersey.
- (5) For the purposes of paragraphs (3) and (4), a direction given by HM Treasury under paragraph 1(3) or (4) of Schedule 7 to the Counter-Terrorism Act 2008 shall be sufficient for the Minister to form a reasonable belief that there is a significant risk to the interests of Jersey.
- (6) The States may, by Regulations, amend any of the conditions in this Article, including making provision in respect of any factors which will be sufficient for the Minister to form a reasonable belief that there is a significant risk to the interests of Jersey.

6 Directions

- (1) The Minister may, by Order, give a direction to –
 - (a) all persons who are within a description of relevant persons; or
 - (b) all relevant persons.
- (2) The Minister may give a direction to a particular relevant person.
- (3) A direction may impose requirements in relation to transactions or business relationships with –
 - (a) a person carrying on business in the relevant country or territory outside Jersey;
 - (b) the government of that country or territory;
 - (c) a person resident or incorporated in that country or territory.

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- (4) Requirements referred to in paragraph (3) may be imposed in relation to –
 - (a) a particular person;
 - (b) all persons who are within a description of persons; or
 - (c) all persons,
within that paragraph.
 - (5) A direction may make different provision in relation to –
 - (a) different descriptions of recipient;
 - (b) different descriptions of designated person; and
 - (c) different descriptions of transaction or business relationship.
 - (6) Descriptions of transactions or business relationships for the purposes of paragraph (5)(c) may, in particular, include transactions or business relationships of a particular branch (or description of branch) of a recipient.
 - (7) The kinds of requirement that may be imposed by a direction under this Article are specified in paragraphs (8) to (11).
 - (8) A direction may require a recipient to undertake enhanced customer due diligence measures –
 - (a) before entering into a transaction or business relationship with a designated person; and
 - (b) during a business relationship with such a person.
 - (9) A direction imposing a requirement referred to in paragraph (8) may do either or both of the following –
 - (a) impose a general obligation to undertake enhanced customer due diligence measures, it being for the recipient to determine those measures and to which of the customer due diligence measures described in Article 3 such enhanced measures relate;
 - (b) require a recipient to undertake specific measures identified or described in the direction.
 - (10) A direction may require a recipient to provide such information and documents as may be specified in the direction, such information and documents relating to transactions and business relationships with the designated person.
 - (11) A direction may require a recipient not to enter into or not to continue to participate in –
 - (a) a specified transaction or business relationship with a designated person;
 - (b) transactions or business relationships of a specified description with a designated person; or
 - (c) any transaction or business relationship with a designated person.
 - (12) A direction imposing a requirement referred to in paragraph (10) must specify how the direction is to be complied with, including –
 - (a) the person to whom the information and documents are to be provided; and

- (b) the period within which, or intervals at which, information and documents are to be provided.
- (13) The power referred to in paragraph (10) is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (14) The requirements imposed by a direction must be proportionate having regard to the advice mentioned in Article 5(2) or, as the case may be, the risk mentioned in Article 5(3) or (4) to the interests of Jersey.
- (15) In this Article, a transaction or business relationship with a designated person includes any transaction or business relationship between the relevant person and –
 - (a) any person acting on behalf of, or at the direction of, the designated person; and
 - (b) any person in relation to whom the designated person is –
 - (i) a beneficial owner or controller, or
 - (ii) a holding body within the meaning of the Companies (Jersey) Law 1991⁸,regardless of whether or not the designated person is directly involved in such transaction or business relationship.

7 Procedural requirements for general directions under Article 6(1)

- (1) This Article applies to a direction given under Article 6(1).
- (2) The Minister must take such steps as he or she considers appropriate to bring the giving of the direction to the attention of the recipients.
- (3) The Order (if not previously revoked and whether or not amended) ceases to have effect at the end of the period of one year beginning with the day on which it was made.
- (4) Paragraph (3) is without prejudice to the giving of a further Order.
- (5) When the Order is amended or ceases to have effect (whether on revocation or otherwise), the Minister must take such steps as he or she considers appropriate to publicize that fact.

8 Procedural requirements for specific directions under Article 6(2)

- (1) This Article applies to a direction given to a particular relevant person under Article 6(2).
- (2) The Minister must give notice of the direction to the recipient.
- (3) The Minister may revoke or amend such a direction at any time.
- (4) A direction (if not previously revoked and whether or not amended) ceases to have effect at the end of the period of one year beginning with the day on which the direction is given.
- (5) Paragraph (4) is without prejudice to the giving of a further direction.

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- (6) Where a direction is amended or ceases to have effect (whether on revocation or otherwise), the Minister must give notice of that fact to the recipient.

9 Directions limiting or ceasing business: exemption by licence

- (1) Where a direction contains requirements of a kind mentioned in Article 6(11), the Minister may grant a licence to exempt acts specified in the licence from those requirements.
- (2) A licence may be –
- (a) general or granted to all persons who are within a description of persons or to a particular person;
 - (b) subject to conditions; and
 - (c) of indefinite duration or subject to an expiry date.
- (3) The Minister may amend or revoke a licence at any time.
- (4) On the grant, amendment or revocation of a licence, the Minister must –
- (a) in the case of a licence granted to a particular person, give notice of the grant, amendment or revocation to that person; or
 - (b) in the case of a general licence or a licence granted to all persons who are within a description of persons, take such steps as the Minister considers appropriate to bring notice of the grant, amendment or revocation to the attention of the persons who are affected by it.

10 Applications in relation to a direction or licence

- (1) Subject to Article 11, any person aggrieved by a decision of the Minister under this Law may apply to the Court in accordance with this Article to set aside the Minister's decision.
- (2) An application may be made on the ground that the Minister's decision is unreasonable having regard to all the circumstances of the case.
- (3) Subject to paragraph (4), on an application under this Article the Court may make such interim or final order as it thinks fit.
- (4) If the Court sets aside the Minister's decision to give a direction (including amending a direction) it must –
- (a) quash the direction if given by notice; or
 - (b) direct the Minister to revoke the relevant Order forthwith, if the direction is given by Order.
- (5) A person's application under this Article must be lodged with the Court no later than one month after the date specified below –
- (a) if the application relates to the giving of a direction by Order, the date the Order is made or, if the case requires, the date the Order is amended;
 - (b) if the application relates to the giving or amendment of a direction by notice, the date such notice is given to a recipient;

- (c) if the application relates to a licence in relation to which notice has been given under Article 9(4)(a), the date such notice is given;
 - (d) if the application relates to the grant or amendment of a general licence or a licence granted to persons who are within a description of persons, the date such licence is granted or amended, as the case requires.
- (6) The Court may extend the time limit described in paragraph (5) if it thinks fit.

11 Where the Minister relies on a HM Treasury direction

- (1) No application under Article 10 shall lie to set aside the Minister's decision to give a direction if the Minister certifies that, in giving the direction, the Minister formed a reasonable belief concerning a risk to the interests of Jersey in reliance on a direction given by HM Treasury described in Article 5(5).
- (2) A certificate under paragraph (1) shall specify the direction on which the Minister relied.
- (3) If the direction specified in accordance with paragraph (2) –
 - (a) is set aside (whether or not on appeal) following proceedings under section 63 of the Counter-Terrorism Act 2008;
 - (b) ceases to have effect under paragraph 15(3), or is contained in an order which ceases to have effect under paragraph 16(4), of Schedule 7 to that Act; or
 - (c) is revoked under paragraph 15(4) of Schedule 7 to that Act or is contained in an order which was revoked in accordance with paragraph 16(3) of Schedule 7 to that Act,the Minister's direction given in reliance on that direction shall be deemed to be revoked on the date that the decision to set aside takes effect or the direction ceases to have effect or is revoked or the order containing the direction ceases to have effect or is revoked, as the case may be.
- (4) If, to the Minister's knowledge, the direction specified in accordance with paragraph (2) is varied in a material particular, or the order containing the direction is varied in a material particular, paragraph (1) shall not apply unless the direction made by the Minister has been amended to achieve an equivalent effect.
- (5) The States may, by Regulations, amend this Article.

12 Rules of court, disclosure and special counsel

- (1) The Schedule has effect.
- (2) The States may, by Regulations, amend the Schedule.

13 Disclosure of information

Information may be disclosed for the purpose of –

- (a) enabling or facilitating the exercise of the Minister's functions under this Law; or
 - (b) complying with any requirement under Article 6(9) of this Law,
- notwithstanding any restriction on such disclosure, whether imposed by statute or otherwise, and such disclosure shall not give rise to any cause of action in any proceedings.

14 Offences

- (1) A person who fails to comply with a requirement imposed by a direction shall be guilty of an offence.
- (2) No offence under paragraph (1) is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether a person has committed an offence under paragraph (1), the court must consider whether the person followed any relevant guidance or code of practice that was at the time issued by the Commission or any other relevant supervisory body.
- (4) In deciding whether a person has committed an offence under paragraph (1) –
 - (a) non-compliance by the person with any relevant provision of guidance or a code of practice may be relied on as tending to establish liability; and
 - (b) compliance by the person with any relevant provision of guidance or such a code may be relied on as tending to negative liability.
- (5) A recipient of a direction who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly) to circumvent a requirement imposed by the direction shall be guilty of an offence.
- (6) A person who, for the purpose of obtaining a licence under Article 9 –
 - (a) provides information that is false in a material respect or a document that is not what it purports to be; and
 - (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be,is guilty of an offence.
- (7) A person guilty of an offence under this Article is liable to imprisonment for a term of two years and to a fine.
- (8) A person may commit an offence under this Law by conduct wholly or partly outside Jersey.
- (9) Nothing in paragraph (8) affects any criminal liability arising otherwise than under that paragraph.

15 Service of notices

- (1) Any notice required by this Law to be given to any person may be given to or served on the person in question –
 - (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address;
 - (c) by sending it by post to the person at that address; or
 - (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (2) Any such notice may –
 - (a) in the case of a company incorporated in Jersey, be served by being delivered to its registered office;
 - (b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or to or on the person having the control or management of the business, as the case may be.
- (3) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954⁹ in its application to this Article, the proper address of any person to or on whom a notice is to be given or served by post shall be the person's last known address or, where a notice is served as described in paragraph (2), the address of the registered office (if there is one) or main business address of the company, partnership, or unincorporated association.
- (4) If the person to or on whom any notice is to be given or served has notified the Commission or any relevant supervisory body of an address within Jersey other than the person's proper address within the meaning of paragraph (3), as the one at which the person or someone on the person's behalf will accept documents, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.

16 Regulations and Orders

An Order or Regulations under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister or the States, as the case may be, to be necessary or expedient for the purposes of the Order or Regulations.

17 Consequential amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

- (1) In this Article "Law" means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008¹⁰.

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- (2) In Article 2 of the Law for paragraph (a) there shall be substituted the following paragraph –
- “(a) monitoring compliance by a supervised person with –
- (i) any requirement to which that person is subject under this Law,
 - (ii) any Order under Article 37 of the Proceeds of Crime (Jersey) Law 1999¹¹,
 - (iii) any direction under Article 6 of the Money Laundering and Weapons Development (Directions) (Jersey) Law 201-¹², and
 - (iv) any Code of Practice that applies to that person or the supervised business carried on by that person;”.
- (3) In Article 3 of the Law –
- (a) after paragraph (1)(c) there shall be inserted the following sub-paragraph –
- “(ca) the Money Laundering and Weapons Development (Directions) (Jersey) Law 201-”;
- (b) in paragraph (1)(g) for the matter “(c)” there shall be substituted the matter “(ca)”.
- (4) For Article 30(5)(c) of the Law there shall be substituted the following sub-paragraph –
- “(c) the compliance by any person to whom this Article applies with –
- (i) this Law,
 - (ii) any Code of Practice made, or condition of any grant of registration, or a direction given, under this Law,
 - (iii) any Order under Article 37 of the Proceeds of Crime (Jersey) Law 1999, or
 - (iv) any direction given under Article 6 of the Money Laundering and Weapons Development (Directions) (Jersey) Law 201-,”.
- (5) In Article 31(1)(a) of the Law there shall be added after clause (vi) the following clause –
- “(vii) any direction given under Article 6 of the Money Laundering and Weapons Development (Directions) (Jersey) Law 201-;”.

18 Citation and commencement

This Law may be cited as the Money Laundering and Weapons Development (Directions) (Jersey) Law 201- and shall come into force 7 days after it is registered.

SCHEDULE

(Article 12)

RULES OF COURT, DISCLOSURE AND SPECIAL COUNSEL**1 Application**

This Schedule applies to –

- (a) proceedings under Article 10 of this Law; or
- (b) proceedings on an appeal relating to proceedings under Article 10 of this Law.

2 Powers to make rules of court

Article 13 of the Royal Court (Jersey) Law 1948¹³ or Article 19 of the Court of Appeal (Jersey) Law 1961¹⁴, as the case requires, shall be read to include the provisions of this Schedule for the purpose of making rules of court in relation to proceedings to which this Schedule applies.

3 General provisions about rules of court

- (1) In making rules of court, the Court or the Court of Appeal, as the case requires, must have regard to –
 - (a) the need to secure that the decisions that are the subject of the proceedings are properly reviewed; and
 - (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.
- (2) Rules of court may make provision –
 - (a) about the mode of proof and about evidence in the proceedings;
 - (b) enabling or requiring the proceedings to be determined without a hearing; and
 - (c) about legal representation in the proceedings.
- (3) Rules of court may make provision –
 - (a) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of a party to the proceedings);
 - (b) enabling the court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of a party to the proceedings);
 - (c) about the functions of special counsel;

- (d) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence.
- (4) In this paragraph –
 - (a) references to a party to the proceedings do not include the Chief Minister;
 - (b) references to a party's legal representative do not include special counsel.

4 Rules about disclosure

- (1) Subject to sub-paragraphs (2) to (5), rules of court must secure that the Chief Minister is required to disclose –
 - (a) material on which he or she relies;
 - (b) material that adversely affects his or her case; and
 - (c) material that supports the case of a party to the proceedings.
- (2) Rules of court must secure –
 - (a) that the Chief Minister has the opportunity to make an application to the court before which the proceedings take place for permission not to disclose material otherwise than to –
 - (i) the court, or
 - (ii) special counsel;
 - (b) that such an application is always considered in the absence of every party to the proceedings (and in the absence of every legal representative of every party to the proceedings);
 - (c) that the court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
 - (d) that, if permission is given by the court not to disclose material, it must consider requiring the Chief Minister to provide a summary of the material to every party to the proceedings (and to every legal representative of every party to the proceedings); and
 - (e) that the court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.
- (3) Rules of court must secure that in cases where the Chief Minister –
 - (a) does not receive the court's permission to withhold material, but elects not to disclose it; or
 - (b) is required to provide every party to the proceedings (and every legal representative of every party to the proceedings) with a summary of material that is withheld, but elects not to provide the summary,provision applies to the effect set out in sub-paragraph (4).
- (4) The court must be authorized by the rules of court –

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- (a) if it considers that the withheld material (whether or not a summary of that material is required) might adversely affect the Chief Minister's case or support the case of a party to the proceedings, to direct that the Chief Minister shall not rely on the material, or shall make such concessions or take such other steps, as the court may specify; or
 - (b) in any other case, to ensure that the Chief Minister does not rely on the withheld material (whether or not a summary of that material is required).
 - (5) Nothing in this paragraph, or in rules of court as referred to in it, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the Human Rights Convention.
 - (6) In this paragraph –
 - (a) references to a party to the proceedings do not include the Chief Minister;
 - (b) references to a party's legal representative do not include special counsel; and
 - (c) "the Human Rights Convention" means the Convention within the meaning of the Human Rights (Jersey) Law 2000¹⁵.

5 Appointment of special counsel

- (1) The Attorney General shall appoint a panel of persons, such panel consisting of not less than 10 advocates of the Court, for the purposes of this paragraph.
- (2) A person appointed under sub-paragraph (1) may be removed from the panel at any time by the Attorney General whether or not at the person's request.
- (3) Subject to sub-paragraph (5), the Court or Court of Appeal, as the case requires, may appoint a person ("special counsel") who is –
 - (a) a member of the panel; or
 - (b) eligible to be appointed as a special advocate under the Counter-Terrorism Act 2008,for the purposes described in sub-paragraph (4).
- (4) Those purposes are to represent the interests of a party to –
 - (a) proceedings from which the party (and any legal representative of the party) is excluded; or
 - (b) proceedings (being proceedings on an appeal) from which the party (and any legal representative of the party) is excluded.
- (5) A person referred to in sub-paragraph (3)(b) shall not be appointed under sub-paragraph (3) unless the Court or the Court of Appeal, as the case requires, is satisfied that it is in the public interest or in the interests of justice to appoint such a person in the particular circumstances of the proceedings in question.

- (6) A person appointed under sub-paragraph (3) is not responsible to the party to the proceedings whose interests the person is appointed to represent.

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- ¹ *chapter 17.140*
² *chapter 13.250*
³ *chapter 08.780*
⁴ *chapter 08.780*
⁵ *chapter 13.475*
⁶ *L.6/2011*
⁷ *chapter 08.785*
⁸ *chapter 13.125*
⁹ *chapter 15.360*
¹⁰ *chapter 08.785*
¹¹ *chapter 08.780*
¹² *P.128/2011*
¹³ *chapter 07.770*
¹⁴ *chapter 07.245*
¹⁵ *chapter 15.350*