



Jersey

## DRAFT PROCEEDS OF CRIME (AMENDMENT No. 5-6) (JERSEY) LAW 202-

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## DRAFT PROCEEDS OF CRIME (AMENDMENT No. 5-6) (JERSEY) LAW 202-

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

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

### PART 1

#### AMENDMENT OF THE PROCEEDS OF CRIME (JERSEY) LAW 1999

#### 1 Interpretation of Part 2

The Proceeds of Crime (Jersey) Law 1999 is amended as described in this Part.

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

After Article 35 there is inserted –

##### “35A Failure to prevent money laundering

- (1) A financial services business (B) commits an offence, and is liable to a fine, 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 –
  - (a) B had prevention procedures in place; and
  - (b) those prevention procedures would be considered adequate by a reasonable professional engaged in B’s business.
- (3) A person may be engaged in money laundering –

- (a) whether that money laundering commenced prior to or after the coming into force of this article;
  - (b) whether or not they have been convicted of an offence.
- (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;
  - (d) any customer of B, or any agent of any 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) 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.
- (5) In paragraph (4)(d) “customer” has the same meaning as in Schedule 3.”.

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

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

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

Before Article 40 there is inserted –

#### **“39A Offences by bodies corporate and others**

- (1) In this article –
- “relevant person” means –
- (a) if the offence is committed by a limited liability partnership, a partner of the partnership;
  - (b) if the relevant 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;]
- (d) if the relevant offence is committed by an unincorporated association, a person concerned in the management or control of the association;] and
- (e) a person purporting to act in any capacity described in subparagraphs (a) to [(d)] 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 an offence under this Law or any order made under it 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.”.

## PART 2

### GENERAL

#### 5 Citation and commencement

This Law may be cited as the Proceeds of Crime (Amendment No. 5-6) (Jersey) Law 202- and comes into force [7 days after it is registered].