

Cannabis: amendments to the Proceeds of Crime Law in Jersey

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On 30 June 2021, the Government of Jersey debated, and passed, certain amendments to the Proceeds of Crime (Jersey) Law 1999 (the **Law**) to amend the current definition of criminal conduct. This will facilitate investment and structuring in the cannabis sector.

Background

Many local financial services businesses (**FSBs**) will have recently experienced increased enquiries from clients wishing to move away from traditional investments and investment strategies and look to invest directly and indirectly in the lucrative recreational and medicinal cannabis sectors.

In Jersey, the government recently legalised the on-island growing of cannabis for medicinal purposes and the island is positioning itself as a key player in this field, which was valued at £5.64 billion in 2020. However, growing and supplying cannabis for recreational use remains very much illegal as a matter of Jersey law.

The cannabis sector is a "growing" market – so far, 36 US states and the district of Columbia have approved the medicinal use of marijuana and 15 of those have also approved its recreational use. The start-ups looking to produce new cannabis technologies are readily available investments, including cultivation management and distribution (home delivery apps for cannabis orders proved to be particularly lucrative and in demand during the pandemic). There is even a stock exchange dedicated to monitoring the value of medicinal and legal marijuana; the Global Cannabis Stock Index was established in 2013 and tracks the overall publically traded market value for these sectors. CBD cannabis is being utilised in numerous industries; one example is healthcare and wellbeing, ranging from healing products to face creams.

For FSBs in Jersey, the difficulty had always been that Jersey applied a "single criminality test". This meant that if the conduct undertaken in another jurisdiction was unlawful in Jersey, it was

deemed to be criminal conduct even if it was perfectly lawful in the original jurisdiction. Article 1(2A) of the Law states: "a person benefits from any criminal conduct if that person obtains property as a result of or in connection with the conduct, and a person benefits from criminal conduct if the person receives any payment or other reward in connection with such conduct, whether carried out by that person or another".

As such, prior to the amendment, any involvement with the overseas cannabis sector (regardless of it being perfectly legal in that jurisdiction) which resulted in proceeds derived from such involvement were treated as proceeds of crime, such that Suspicious Activity Reporting requirements would be triggered and filed with the States of Jersey Police. This may have resulted in assets being frozen in Jersey and FSBs finding themselves in the unenviable position of being unable to process those proceeds and divest themselves of the asset, which in turn could cause significant operating issues for the FSB.

The amendments

The new regulations, passed on 30 June 2021, came into force on 7 July and clarify which investments should not be treated as proceeds of crime by FSBs. It has amended the definition of "criminal conduct" under the Law to provide that the production, supply, use, export or import of cannabis or any of its derivatives is no longer considered criminal conduct provided that:

- it is lawful where and when it occurs; and
- it occurs in a jurisdiction outside of Jersey that the Minister for External Relations and Financial Services may specify by Order.

The Order as to which jurisdiction will be an "approved jurisdiction" will be those countries which apply equivalent money laundering controls to Jersey and reflect FATF standards; these are the international standards concerning money laundering, terrorist financing and financing of proliferation. In addition, it is anticipated there will be guidance to sit alongside the law to deal with the position of directors and other officers involved with cannabis related companies. The "approved list" can be found [here](#).

The test - investors beware

Whilst clearly a step in the right direction, it should be noted that the Regulations do not provide blanket approval. As such, when considering whether their investment complies with the Regulations, FSBs will be required to conduct a two stage due diligence test. They will need to ensure that:

- the cannabis related activities that generated the proceeds were lawful in the place where and when they took place; and

- the jurisdiction is on the approved list and there are no unspecified jurisdictions involved in the supply chain (production, distribution etc).

Once the FSB has established that the tests are met, the cannabis proceeds will no longer be the proceeds of crime under Jersey law. This will apply even if the proceeds were generated prior to the Regulations coming into force.

Proceeds which are generated from conduct which is not lawful where and when it occurred do not benefit from the exemption of criminal conduct and remain proceeds of crime under the Law. If the jurisdiction does not feature on the approved list, then even if the proceeds are legal in that jurisdiction, they would also remain proceeds of crime. Investors beware!

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