



**POSITION PAPER
NO. 1 2007**

**IMPLEMENTATION OF FATF
SPECIAL RECOMMENDATION VII
ON WIRE TRANSFERS**

Draft legislation, regulatory requirements, and guidance

POSITION PAPER

If you require any assistance or clarification, wish to discuss any aspect of this paper, or have any observations please contact:

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POSITION PAPER

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1- EXECUTIVE SUMMARY

OVERVIEW

- 1.1 The Financial Action Task Force (“**FATF**”) has issued an international standard - Special Recommendation VII (“**SR VII**”) - establishing requirements for information to accompany payments that are made electronically (“**transfers**”).
- 1.2 The main objective of SR VII is to ensure that certain information on customers will be available to payment service providers involved in making transfers - and also to appropriate authorities. Obligations are placed on the payment service provider of the customer requesting that a transfer be made (referred to as the “**payer**”), the payment service provider of the person that is to receive the transfer (referred to as the “**payee**”) and on any intermediate payment service providers (such as correspondent banks).
- 1.3 In the case of cross-border transfers, the following minimum information (“**complete information**”) must be provided on the payer:
 - 1.3.1 customer name;
 - 1.3.2 customer address (or date and place of birth, **or** national identity number, **or** customer identification number); and
 - 1.3.3 customer account number (or a unique customer identifier where a transfer is not from an account).
- 1.4 In the case of transfers within the same jurisdiction (“**domestic transfers**”), just an account number or a unique identifier is required.
- 1.5 The European Union (“**EU**”) has issued a Regulation implementing SR VII - Regulation (EC) No 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds (“**EU Payments Regulation**”) - which has had direct effect in EU Member States since 1 January 2007. The EU Payments Regulation may be found at:
http://eurlex.europa.eu/LexUriServ/site/en/oj/2006/l_345/l_34520061208en00010009.pdf
- 1.6 The EU Payments Regulation permits Member States to treat transfers both within and between States as domestic transfers. Transfers made between a Member State and any other jurisdiction, including Jersey, must be treated as cross-border transfers.
- 1.7 Notwithstanding this, Article 17(1) of the EU Payments Regulation permits a Member State to apply to the European Commission (“**EC**”) to be able to treat transfers to and from its dependent territories as transfers within that Member State. The United Kingdom (“**UK**”)

has made an application in respect of each of the Crown Dependencies¹ – so that transfers between the UK and Crown Dependencies may be treated as domestic transfers (but not transfers between other Member States and the Crown Dependencies – which will be treated as cross-border).

- 1.8 The EC may approve the UK’s application in respect of Jersey (and the other Crown Dependencies) only if it is satisfied that Jersey payment service providers are required to apply the “same rules” as those established in the EU Payments Regulation. Pending authorisation by the EC, transfers between the UK and Jersey (and the UK and the other Crown Dependencies) may be treated by UK payment service providers as transfers within the UK, i.e. domestic transfers.

WHAT IS PROPOSED AND WHY?

- 1.9 Jersey is committed to implementing SR VII in line with implementation in the EU:
- 1.9.1 to meet international standards; and
- 1.9.2 in order that transfers between the UK and Jersey may continue to be made cheaply and quickly through UK payment systems, including BACS² - since BACS does not provide for the inclusion of the information that will otherwise be required.
- 1.10 Draft legislation has been prepared - the Community Provisions (Wire Transfers) (Jersey) Regulations 200- (“**draft Regulations**”) which will be brought into force during the second quarter of 2007. The draft Regulations do not include sanctions, which will be added to the Regulations later in 2007, once it becomes clear what sanctions will apply in the UK. The intention is that sanctions will apply from mid-December 2007. It will also be necessary to make consequential changes to the draft Regulations, as and when the draft Money Laundering Order (Jersey) 200- comes into force (and is consequently amended)³.
- 1.11 Regulatory requirements and guidance will also be introduced – at the same time that the regulations are brought into force.
- 1.12 The draft Regulations, regulatory requirements, and guidance, are closely based on the EU Payments Regulation – in order that Jersey may be seen as applying “same rules” under Article 17(1) of the EU Payments Regulation.
- 1.13 In considering the application made by the UK and referred to at 1.7 and 1.8, it is likely that the EC will request further information, such as a copy of the draft Regulations. On this basis, it is not intended to lodge the draft Regulations au Greffe until the UK’s application

¹ The Bailiwick of Jersey, the Bailiwick of Guernsey, and the Isle of Man.

² Direct debits, direct credits, and standing orders are processed through BACS.

³ See Consultation Paper No.4 2006 - Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism and subsequent feedback on http://www.jerseyfsc.org/the_commission/anti-money_laundering/consultation_papers/index.asp.

has been considered – so that any changes that may be necessary in order to apply “same rules” can be accommodated.

- 1.14 Similar legislation is to be introduced in the Bailiwick of Guernsey and the Isle of Man. Draft Guernsey legislation and guidance may be found at <http://www.gfsc.gg/content.asp?pageID=397> and Isle of Man guidance at <http://www.fsc.gov.im/ViewNews.gov?menuid=10253&page=lib/news/fsc/amendments/tothea3.xml>. Draft Isle of Man legislation is not yet available.
- 1.15 Guernsey will delay implementation of legislation until later in the year. The Isle of Man is expected to introduce legislation at or around the same time as Jersey.

WHO WILL BE AFFECTED?

- 1.16 The draft Regulations will affect those whose business includes the provision of transfer of funds services. In Jersey, this will include banks registered under the Banking Business (Jersey) Law 1991, and money service businesses – such as Moneygram, Western Union, and Girobank.
- 1.17 The draft Regulations will also affect users of fund transfer services – since transfers must include a minimum amount of information concerning the payer with the transfer.
- 1.18 In any event, such persons will be affected even in the absence of any legislation in Jersey. SR VII is to be implemented internationally, and payment service providers and users of fund transfer services will increasingly find that transfers that do not include minimum information will be rejected, or further information requested - which may delay processing.

CONSULTATION

- 1.19 The draft Regulations and section for the draft Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (“**Handbook**”) have been the subject of an extensive period of consultation with the Jersey Bankers’ Association. They have also been discussed with Her Majesty’s Treasury in the UK.
- 1.20 Given the above, the limited discretion available to the Island in implementing SR VII, and the EC’s request for further information to support the UK’s application under Article 17(1) of the EU Payments Regulation (which is likely to include the draft Regulations), it is not practicable to consult any further on the draft Regulations and draft Handbook section.

2 - THE DRAFT REGULATIONS

EU PAYMENTS REGULATION

- 2.1 As noted, the draft Regulations are based on the EU Payments Regulation. The following paragraphs outline the approach that has been followed in some key areas – in seeking to apply “same rules”.
- 2.2 The draft Regulations are attached at Appendix A.

MONEY LAUNDERING DIRECTIVE

- 2.3 The EU Payments Regulation includes a number of references to Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (“**Money Laundering Directive**” or “**Directive**”). Relevant references to the Directive may be found at:
- Article 2 of the EU Payments Regulation - definitions of “terrorist financing” and “money laundering”;
 - Article 3(3) of the EU Payments Regulation - derogation for electronic money;
 - Articles 3(5)(c) and 3(6)(a) of the EU Payments Regulation - exceptions to scope of EU Payments Regulation;
 - Articles 5(3)(a) and (b) of the EU Payments Regulation - exemptions from verification requirements; and
 - Article 10 of the EU Payments Regulation - reference to reporting obligations under Chapter III.
- 2.4 In the case of Articles 2 and 3(3) of the EU Payments Regulation, the approach adopted has been to incorporate definitions contained in the Money Laundering Directive into Regulations 1 to 3 of the draft Regulations, on the basis that these definitions have applied - in the area of transfers - throughout the EU since 1 January 2007.
- 2.5 In the case of Articles 3 and 5 of the EU Payments Regulation, reference has been made in Regulation 6 of the draft Regulations to Article 2(1) of the Money Laundering (Jersey) Order 1999 (“**Money Laundering Order**”), which requires systems and training to forestall and prevent money laundering, despite Article 2(1) of the Money Laundering Order not applying the “same rules” as those set out in the Money Laundering Directive. This approach has been adopted since domestic legislation in the UK has yet to implement the Money Laundering Directive, and similar rules will apply in Jersey and the UK until such time as the Money Laundering Regulations 2007 are introduced. It follows that, in order to

continue to apply “same rules”, it will be necessary to update parts of the draft Money Laundering Order (Jersey) 200-

- 2.6 In the case of Article 10 of the EU Payments Regulation where the reference is to Chapter III of the Money Laundering Directive, reference has been made in Regulation 11 of the draft Regulations to existing reporting obligations contained in the Terrorism (Jersey) Law 2002, Drug Trafficking Offences (Jersey) Law 1988, and Money Laundering Order. In addition to this - and in line with the UK (and rest of the EU) - Regulation 11(2) also introduces a direct reporting obligation that is based on an objective test. Similar tests will be introduced in Guernsey and the Isle of Man before the end of 2007.

EXEMPTIONS FOR TRANSFERS TO AND FROM THE UK AND OTHER CROWN DEPENDENCIES

- 2.7 In order to mirror provisions that are expected to apply under the EU Payments Regulation to transfers between the UK and Jersey - so long as the UK’s application to the EC is successful - Regulation 7 of the draft Regulations provides for transfers within Jersey or to or from the UK (or Crown Dependency) to be accompanied by just the payer’s account number or a unique identifier.
- 2.8 In addition, in order to provide for consistency in the use of payment systems in Jersey and the UK, the draft Regulations also provide for a concessionary regime to apply at:
- 2.8.1 Regulations 5(5) - an exemption from the scope of the Regulations that may be applied where the payment service provider of the payee is situated in the UK (or Crown Dependency).
- 2.8.2 Regulation 5(6)(d) - an exemption for transfers to UK (and Crown Dependency) public authorities for taxes, fines or levies.

ACTION WHERE INFORMATION IS MISSING OR INCOMPLETE

- 2.9 Regulation 10 of the draft Regulations provides that, if the payment service provider of the payee becomes aware that information on the payer required by the draft Regulations is missing or incomplete when receiving transfers, the payment service provider of the payee shall:
- 2.9.1 reject the transfer;
- 2.9.2 ask for complete information on the payer; or
- 2.9.3 take another action that is specified to be required for the purposes of the Regulation by an Order made by the Minister for Treasury & Resources.
- 2.10 The second option is silent on what should be done with funds pending the receipt of information requested - providing flexibility to payment service providers.

- 2.11 This third option has been included in order to address a particular concern that has been discussed at some length with the Jersey Bankers' Association. A similar approach is proposed in Guernsey, where it is proposed that the Guernsey Financial Services Commission will be able to direct on steps to be taken.
- 2.12 The concern is that, whilst Jersey is not part of the EU, some of our banks use "GB" bank identification codes⁴ ("BICs") to identify the bank where payment is to be made to, and all use "GB" international bank account numbers ("IBANs") to identify customer accounts. Accordingly, it may not be possible for a payment service provider that is situated in the EU to readily determine that a transfer is being made to Jersey (as opposed to the UK), and, even in the case of a bank that uses a "JE" BIC, many payment service providers situated in the EU may be unaware that Jersey is not part of the EU - this despite the fact that, if a payment is made to Jersey without complete information, then a payment service provider situated in the EU will have committed an offence⁵.
- 2.13 Jersey banks might, therefore, be faced with dealing with a large number of transfers each month from EU banks that do not provide complete information, and which, in the absence of the third option, they would be required to reject or request additional information on. In such an eventuality, the application of Regulation 10 could have a significant effect on their ability to process incoming transfers on a timely basis and strike at the very heart of "straight through processing". The addition of this third option will allow the Island's authorities to respond swiftly to any difficulties that may be faced by banks.

SANCTIONS AND COMPLIANCE

- 2.14 The draft Regulations do not make any provision for offences - which will be considered later in 2007. This is in line with the approach followed in the UK (and elsewhere in the EU) where sanctions will be introduced with effect from 15 December 2007.
- 2.15 It is intended that the Commission will have responsibility for monitoring compliance by payment service providers with the draft Regulations.

⁴ Bank identification codes ("BICs") are used to route transfers to a payee's bank account.

⁵ This concern does not apply to UK banks which, it is expected, will be able to treat transfers to and from Jersey as being transfers within the UK.

3 - DRAFT HANDBOOK SECTION

BRITISH BANKERS' ASSOCIATION GUIDANCE

- 3.1 Draft requirements and guidance have been based on guidance issued by the British Bankers' Association ("BBA").
- 3.2 Requirements and guidance must be read and understood within the context of Section 1 of the Handbook - as they will become an integral part of the Handbook.
- 3.3 Draft requirements and guidance are set out at Appendix B.
- 3.4 The following paragraphs outline the approach that has been followed in one key area - in seeking to apply "same rules".

SUBSTITUTE INFORMATION FOR ADDRESS

- 3.5 Regulation 6 of the draft Regulations requires complete information to be included in cross-border transfers.
- 3.6 However, it also provides for the provision of other information ("substitute information") - as an alternative to address (date and place of birth, **or** national identity number, **or** a customer identification number). This is in order to deal with international concerns that an address that is provided may fall into the wrong hands and be used for criminal purposes - since it is recognised that payment systems are not impervious to criminal activity.
- 3.7 Part 1.3.3 of the draft requirements and guidance deals with the provision of substitute information. It says that substitute information should be deployed in order to address particular needs, e.g. in order to comply with the seventh principle of the Data Protection (Jersey) Law 2005, or at the specific request of a customer (who will be aware of the information that may be provided in a transfer). So long as there are particular needs, no restriction is placed on the use of substitute information.
- 3.8 The Commission considers that this approach is in line with the spirit of SR VII and BBA guidance - though that guidance also suggests that substitute information may be provided only "selectively" (which the Jersey guidance does not). Draft guidance published by the Guernsey Financial Services Commission, and guidance already published by the Isle of Man Financial Supervision Commission are silent on the use of substitute information - and the Commission will monitor any impact resulting from the absence of guidance in this respect in the Bailiwick of Guernsey and the Isle of Man.
- 3.9 The Commission understands that the approach proposed is unlikely to lead to any difficulties under the Data Protection (Jersey) Law 2005.

- 3.10 In order to establish whether or not there is a need to use substitute information, it will be appropriate to write to customers setting out the information that may be passed to other payment services providers, providing customers with an opportunity to object to the provision of address.

APPENDIX A

DRAFT REGULATIONS

COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 200-



COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 200-

Report

Explanatory Note



COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 200-

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COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996 and having regard to Regulation EC No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, have made the following Regulations –

Interpretative provisions

1 Interpretation

In these Regulations –

“act of terrorism” has the meaning assigned by Regulation 3;

“Agent of the Impôts” has the same meaning as in the Customs and Excise (Jersey) Law 1999;

“batch file transfer” means several individual transfers of funds which are bundled together for transmission;

“designated officer” means a person who is, for the purposes of these Regulations, designated under Regulation 16(1) or (2) or a designated officer under Regulation 16(3);

“electronic money” means monetary value as represented by a claim on the issuer which is –

- (a) stored on an electronic device;
- (b) issued on receipt of funds of an amount not less in value than the monetary value issued; and
- (c) accepted as means of payment by undertakings other than the issuer;

“intermediary payment service provider” means a payment service provider which is neither that of the payer nor that of the payee and which participates in the execution of transfers of funds;

“Jersey Financial Services Commission” means the Commission established under the Financial Services Commission (Jersey) Law 1998;

“money laundering” has the meaning assigned by Regulation 2;

“Money Laundering Order” means the Money Laundering (Jersey) Order 1999;

“officer of the Impôts” has the same meaning as in the Customs and Excise (Jersey) Law 1999;

“payee” means a person who is the intended final recipient of transferred funds;

“payer” means a person who is an account holder who allows a transfer of funds from an account or, where there is no account, a person who places an order for a transfer of funds;

“payment service provider” means a person whose business includes the provision of transfer of funds services;

“public notice” means –

- (a) a notice published in the Jersey Gazette; or
- (b) a notice whose contents are brought to the attention of the public by the taking of other reasonable steps for that purpose;

“terrorist financing” has the meaning assigned by Regulation 3;

“transfer of funds” means any transaction carried out on behalf of a payer through a payment service provider by electronic means with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;

“unique identifier” means a combination of letters, numbers or symbols, determined by a payment service provider in accordance with the protocols of the payment and settlement system or messaging system used to effect a transfer of funds by the provider;

“United Kingdom” includes any country or territory (other than Jersey) –

- (a) with which the United Kingdom has an agreement that it has been authorized to conclude under Article 17 of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds; or
- (b) in respect of which transfers of funds between that country or territory and the United Kingdom are provisionally treated as transfers of funds within the United Kingdom pursuant to that Regulation.

2 Meaning of “money laundering”

(1) For the purposes of these Regulations, money laundering means –

- (a) the intentional conversion or transfer of property, knowing that the property is derived from criminal activity or participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of criminal activity to evade the legal consequences of the person’s action;
- (b) the intentional concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from participation in criminal activity;
- (c) the intentional acquisition, possession or use of property, knowing, at the time of receipt, that the property was derived from criminal activity or from participation in criminal activity;
- (d) intentional participation in, association to commit, attempts to commit and aiding, abetting, facilitating or counselling the commission of, any of the actions mentioned in sub-paragraphs (a) to (c),

whether or not the activities that have generated the property to be laundered were carried out in Jersey or any other country or territory.

(2) In this Regulation –

“criminal activity” means any kind of criminal involvement in the commission of a serious crime;

“criminal organization” means a structured association, established over a period of time, of more than 2 persons, acting in concert with a view to committing offences which are punishable by imprisonment or detention for 4 years or more, whether such offences are an end in themselves or a means –

- (a) of obtaining material benefits; and
- (b) where appropriate, of improperly influencing the operation of public authorities;

“drug offence” means an offence under the Misuse of Drugs (Jersey) Law 1978 or an offence of a similar kind under an enactment of another country or territory;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to or an interest in such assets;

“serious crime” includes –

- (a) any act of terrorism and any act related to an act of terrorism;
- (b) any drug offence;
- (c) the activities of a criminal organization;
- (d) fraud, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities’ Financial Interests signed on 26 July 1995, that is serious fraud within the meaning of the Convention;
- (e) corruption;
- (f) an offence which is punishable by imprisonment or detention for more than 12 months.

3 Meaning of “terrorist financing” and “acts of terrorism”

(1) For the purposes of these Regulations –

“structured group” means a group that –

- (a) is not randomly formed for the immediate commission of an offence; and
- (b) has formally defined roles for its members, continuity of its membership or a developed structure;

“terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to carry out an act of terrorism or acts related to an act of terrorism;

“terrorist group” means a structured group of more than 2 persons, established over a period of time and acting in concert to commit terrorist offences.

(2) For the purposes of these Regulations, any of the following acts is an act of terrorism, where the act is committed with any of the relevant aims –

- (a) an attack upon a person’s life which may cause death;
- (b) an attack upon the physical integrity of a person;
- (c) kidnapping or hostage taking;

- (d) causing extensive destruction to –
 - (i) a government or public facility,
 - (ii) a transport system,
 - (iii) an infrastructure facility, including an information system,
 - (iv) a fixed platform located on the continental shelf, or
 - (v) a public place or private property,
 likely to endanger human life or result in major economic loss;
 - (e) seizure of aircraft, ships or other means of public or goods transport;
 - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
 - (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
 - (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
 - (i) threatening to commit any of the acts listed in sub-paragraphs (a) to (h);
 - (j) inciting, aiding or abetting any of the acts listed in sub-paragraphs (a) to (i);
 - (k) attempting to commit any of the acts listed in sub-paragraphs (a) to (h), other than an act of possession referred to in sub-paragraph (2)(f).
- (3) The relevant aims are –
- (a) the aim of seriously intimidating a population;
 - (b) the aim of unduly compelling a government or international organization to perform or abstain from performing an act;
 - (c) the aim of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.
- (4) For the purposes of these Regulations, any of the following shall be an act related to an act of terrorism –
- (a) directing a terrorist group;
 - (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group;
 - (c) theft, or extortion, with a view to committing a terrorist act;
 - (d) drawing up false administrative documents with a view to committing an act specified in sub-paragraph (b) or paragraph (2)(a) to (h);
 - (e) inciting, aiding or abetting an act referred to in sub-paragraphs (a) to (d);
 - (f) attempting to commit an act referred to in sub-paragraph (c) or (d).

4 What constitutes complete information on the payer

For the purposes of these Regulations, a reference to complete information on the payer is a reference to the payer's name, address and account number, except that –

- (a) the payer's address may be substituted with the payer's date and place of birth, customer identification number or national identity number;
- (b) if the account number of the payer does not exist, the payer's payment service provider shall substitute it by a unique identifier, which allows the transaction to be traced back to the payer.

5 Application of Regulations

- (1) These Regulations shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider established in Jersey.
- (2) Despite paragraph (1), these Regulations shall not apply to transfers of funds that are exempt.
- (3) A transfer of funds is exempt when it is carried out using a credit or debit card, if –
 - (a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services; and
 - (b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds.
- (4) A transfer of funds is exempt if –
 - (a) the transfer is carried out using electronic money;
 - (b) the amount transacted is EUR 1,000 or less; and
 - (c) where the device on which the electronic money is stored –
 - (i) cannot be recharged, the maximum amount stored in the device is no more than EUR 150, or
 - (ii) can be recharged, a limit of EUR 2,500 is imposed on the total amount transacted in a calendar year, except if an amount of EUR 1,000 or more is redeemed in that same calendar year by the bearer of the device.
- (5) A transfer of funds is exempt if it is carried out by means of a mobile telephone or any other digital or information technology device, if –
 - (a) the transfer is pre-paid and does not exceed EUR 150; or
 - (b) the transfer is post-paid and the following conditions are met –
 - (i) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services,
 - (ii) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds,
 - (iii) the payment service provider of the payee is subject to the requirements of Article 2(1) of the Money Laundering Order, Article 40 of the Drug Trafficking Offences (Jersey) Law 1988 and Article 23 of the Terrorism (Jersey) Law 2002 or a provision, of an enactment of the United Kingdom, that imposes a similar requirement.
- (6) A transfer of funds is exempt if –
 - (a) the payer withdraws cash from the payer's own account;
 - (b) there is a debit transfer authorization between 2 parties permitting payments between them through accounts, provided a unique identifier accompanies the transfer of funds to enable the person to be traced back;
 - (c) it is made using cheques that have been truncated;

- (d) it is a transfer to public authorities for taxes, fines or levies within Jersey or the United Kingdom; or
- (e) both the payer and the payee are payment service providers acting on their own behalf.

Obligations of payment service provider of payer

6 General requirements regarding information and record keeping

- (1) The payment service provider of the payer shall ensure that transfers of funds are accompanied by the complete information on the payer.
- (2) The payment service provider of the payer shall, before transferring funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source.
- (3) In the case of a transfer from an account, the complete information on a payer shall be deemed to have been verified if the payment service provider of the payer has complied with the requirements of Article 2(1) of the Money Laundering Order, if any, that apply in relation to the payer.
- (4) In the case of a transfer of funds not made from an account, the complete information on the payer shall be deemed to have been verified by a payment service provider of the payer if –
 - (a) the transfer consists of a transaction of an amount of EUR 1,000 or less;
 - (b) the transfer is not a transaction that is carried out in several operations that appear to be linked and that together comprise an amount of more than EUR 1,000; and
 - (c) the payment service provider of the payer does not suspect that the payer is engaged in money laundering or terrorist financing.
- (5) The payment service provider of the payer shall keep for 5 years records of complete information on the payer that accompanies a transfer of funds.

7 Exception for transfers of funds within Jersey or to or from the United Kingdom

- (1) Despite Regulation 6(1), if the payment service provider of the payer is situated in Jersey and the payment service provider of the payee is situated in Jersey or the United Kingdom, the transfer of funds shall only be required to be accompanied by the payer's account number or a unique identifier allowing the transaction to be traced back to the payer.
- (2) However, if the payment service provider of the payee so requests, the payment service provider of the payer shall, within 3 working days after the day on which the provider receives the request, make the complete information on the payer available to the payment service provider of the payee.

8 Exception for batch transfers to payees outside Jersey or the United Kingdom

Regulation 6(1) shall not apply in the case of a batch file transfer from a single payer, where some or all of the payment service providers of the payees are situated outside Jersey and the United Kingdom, if –

- (a) the batch file contains the complete information on the payer; and

- (b) the individual transfers bundled together in the batch file carry the account number of the payer or a unique identifier.

Obligations of payment service provider of payee

9 Requirement to detect missing or incomplete information

- (1) The payment service provider of the payee shall detect that fields within the messaging or payment and settlement system used to effect the transfer in respect of the information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that messaging or payment and settlement system.
- (2) The payment service provider of the payee shall have effective procedures in place in order to detect –
 - (a) in respect of transfers of funds where the payment service provider of the payer is situated in Jersey or the United Kingdom – that the information required by Regulation 7 is missing;
 - (b) in respect of transfers of funds where the payment service provider of the payer is situated outside Jersey or the United Kingdom – that there is not complete information on the payer.
- (3) Despite paragraph (2), in the case of batch file transfers where the payment service provider of the payer is situated outside Jersey or the United Kingdom, complete information on the payer is required only in the batch file and not in the individual transfers bundled together in it.

10 Action where information missing or incomplete

- (1) If the payment service provider of the payee becomes aware that information on the payer required by these Regulations is missing or incomplete when receiving transfers of funds, the payment service provider of the payee shall –
 - (a) reject the transfer;
 - (b) ask for the complete information on the payer; or
 - (c) take another action that is specified to be required for the purposes of this Regulation by an Order made by the Minister for Treasury and Resources.
- (2) However, a person is not required to comply with paragraph (1) if to do so would contravene any other provision of an enactment.
- (3) If the payment service provider of a payer regularly fails to supply the information on the payer required by these Regulations, the payment service provider of the payee shall report that fact to a designated officer and the Jersey Financial Services Commission.
- (4) If the payment service provider of a payer regularly fails to supply the information on the payer required by these Regulations, the payment service provider of the payee shall take steps to attempt to ensure that the payment service provider of the payer complies with the requirements as to supply of information set out in these Regulations, which steps may include –
 - (a) issuing warnings to the payment service provider of the payer; and
 - (b) setting deadlines for the payment service provider of the payer to comply with the requirements as to supply of information set out in these Regulations.

- (5) If after the payment service provider of the payee has taken steps under paragraph (4) in relation to a payment service provider of the payer, the requirements as to supply of information set out in these Regulations are still not regularly complied with by the payment service provider of the payer, the payment service provider of the payee shall either –
- (a) reject any future transfers of funds from that payment service provider; or
 - (b) decide whether or not to restrict or terminate its business relationship with that provider, either with respect to transfer of funds services or with respect to any mutual supply of services.

11 Requirement to report in certain circumstances where missing or incomplete information makes transaction suspicious

- (1) Missing or incomplete information shall be a factor in the assessment of a payment service provider of the payee as to whether a transfer of funds, or any related transaction, is –
- (a) for the purposes of Article 40 of the Drug Trafficking Offences (Jersey) Law 1988, to be regarded as suspicious and whether accordingly a disclosure is required to be made under that Article;
 - (b) for the purposes of Article 9 of the Money Laundering Order, to be regarded as suspicious and whether accordingly a report is required to be made in accordance with internal reporting procedures that are required under that Article; and
 - (c) for the purposes of Article 23 of the Terrorism (Jersey) Law 2002, to be regarded as suspicious and whether accordingly a disclosure is required to be made under that Article.
- (2) A person shall be guilty of an offence if –
- (a) the person is a payment service provider of a payee or is in the employment of a payment service provider of a payee;
 - (b) there is missing or incomplete information on the payer in relation to a transfer of funds;
 - (c) in whole or in part because of the information being missing or incomplete information being provided –
 - (i) the person knows, or suspects, that a person is engaged in money laundering or terrorist financing, or
 - (ii) there are reasonable grounds for the person to suspect that a person is engaged in money laundering or terrorist financing; and
 - (d) the person fails to report his or her knowledge or suspicions, or the grounds for suspicion, to a designated officer, as soon as practicable after the person had the knowledge, suspicion or reasonable grounds for suspicion.
- (3) It is a defence to a charge of committing an offence under paragraph (2) that the person had a reasonable excuse for not reporting to a designated officer the person's knowledge or suspicions or the grounds for suspicion.
- (4) Where a person, under paragraph (2), discloses to a designated officer –
- (a) the person's knowledge or suspicion, or the grounds for suspicion, that another person is engaged in money laundering or terrorist financing; or
 - (b) any information or other matter on which that knowledge or suspicion, or the grounds for suspicion, are based,

the disclosure shall not be treated as a breach of any restriction imposed by enactment, contract or otherwise.

- (5) Without prejudice to paragraph (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this Regulation that the person disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures.
- (6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by enactment, contract or otherwise.
- (7) Paragraph (2) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him or her in privileged circumstances.
- (8) For the purposes of this Regulation, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to the legal adviser –
 - (a) by, or by a representative of, a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.
- (9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

12 Record-keeping by payment service provider of the payee

The payment service provider of the payee shall keep for 5 years records of any information received on the payer.

Obligations of intermediary payment service provider

13 Intermediary payment service provider to send information with transfer

An intermediary payment service provider shall ensure that all received information on the payer that accompanies a transfer of funds is sent with the transfer.

14 Duties of intermediary payment service provider in case of technical limitations

- (1) This Regulation applies where the payment service provider of the payer is situated outside Jersey and the United Kingdom and the intermediary payment service provider is situated within Jersey.
- (2) If this Regulation applies, an intermediary payment service provider may use to send a transfer to the payment service provider of the payee a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds.

- (3) However, if, when receiving a transfer of funds, the intermediary payment service provider becomes aware that information on the payer required under these Regulations is incomplete, the provider may only use a payment system with technical limitations if the condition in paragraph (4) is complied with.
- (4) The condition is that the intermediary payment service provider (either through a payment or messaging system, or through another procedure, that is accepted or agreed between both the intermediary payment service provider and the payment service provider of the payee) informs the payment service provider of the payee that the information is incomplete.
- (5) An intermediary payment service provider who uses a system with technical limitations shall, if the payment service provider of the payee requests, within 3 working days after the day on which the intermediary payment service provider receives the request, make available to the provider all the information on the payer that the intermediary payment service provider has received, whether or not the information is complete.
- (6) An intermediary payment service provider which has used a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds shall keep for 5 years records of all information on the payer that it has received.

Concluding provisions

15 Co-operation

- (1) A power under any of the specified enactments for a person to require another person to provide information to the person shall be taken to include the power to require a payment service provider to provide to the person –
 - (a) the information in relation to a payer that has accompanied a transfer of funds by or to the provider and that the provider is required to keep by these Regulations; and
 - (b) any records in relation to a payer that the payment service provider is required to keep by these Regulations.
- (2) Subject to any other enactment, any information to which paragraph (1) relates that is provided to a person under a specified enactment by virtue of the operation of paragraph (1) may only be used for the purposes of preventing, investigating or detecting money laundering or terrorist financing.
- (3) For the purposes of this Regulation, the specified enactments are –
 - (a) the Drug Trafficking Offences (Jersey) Law 1988;
 - (b) the Proceeds of Crime (Jersey) Law 1999;
 - (c) the Terrorism (United Nations Measures) (Channel Islands) Order 2001;
 - (d) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002; and
 - (e) the Terrorism (Jersey) Law 2002.

16 Designated officers

- (1) The Chief Officer of the States of Jersey Police Force may, by public notice, designate one or more officers of that Force for the purposes of these Regulations.

- (2) The Agent of the Impôts may, by public notice, designate one or more officers of the Impôts for the purposes of these Regulations.
- (3) If no person is designated under paragraph (1) or (2), the Chief Officer of the States of Jersey Police Force and the Agent of the Impôts shall, respectively, be designated officers for the purpose of these Regulations.

17 Citation and commencement

- (1) These Regulations may be cited as the Community Provisions (Wire Transfers) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force 7 days after they are made.

APPENDIX B

1 WIRE TRANSFERS

1.1 OVERVIEW OF SECTION

The FATF issued Special Recommendation VII in October 2001, with the objective of enhancing the transparency of electronic payment transfers (“**wire transfers**” or “**transfers**”) of all types, domestic and cross border, thereby making it easier for law enforcement to track funds transferred electronically by terrorists and criminals. A revised Interpretative Note to this Special Recommendation was issued by the FATF on 10 June 2005, and is available at <http://www.fatf-gafi.org/dataoecd/34/56/35002635.pdf>.

In Jersey, Special Recommendation VII has been implemented through the Community Provisions (Wire Transfers) (Jersey) Regulations 200- (“**Regulations**”). These Regulations come into force on [to be inserted], though sanctions for non-compliance will not be enforced until 15 December 2007 - coinciding with the introduction of sanctions in the EU under the Regulation on information on the payer accompanying transfers of funds.

The Regulations require a person whose business includes the provision of transfers of funds - a payment service provider (“**PSP**”) - to provide certain information in each wire transfer about the person who gives the instruction for the wire transfer to be made (the “**payer**”). The core requirement is that this information consists of name, address, and account number (“**complete information**”) - though there is separate provision for wire transfers in what is referred to as the UK Payment Area - where limited information may be provided in a transfer. The Regulations also place obligations on the PSP of the person who is the intended final recipient of the wire transfer (the “**payee**”) and on any other PSP that is involved in making the wire transfer. Note that the Regulations provide only for complete information to be held by PSPs, and there is no obligation to pass information on the payer to the payee.

Whilst it is possible that a payee may, in fact, be a conduit for an undisclosed “final recipient” - to serve a criminal objective - within the context of the Regulations, “final recipient” is to be understood as referring to the party named in the transfer as the beneficiary of the payment - unless there is evidence to suggest that another party will benefit.

The Regulations also apply in circumstances where the payer and payee hold accounts with the same PSP.

References to the UK Payment Area in this section are to an area that comprises the United Kingdom, the Bailiwick of Jersey, the Bailiwick of Guernsey, and the Isle of Man. The exemption for transfers in this area arises from expediency, not principle, in order to accommodate transfers by domestic systems like BACS which are currently unable to include complete information. Accordingly, where the system used for a transfer in the UK Payment Area has the functionality to carry complete information, it may make sense to include it, and thereby reduce the likely incidence of inbound requests from payee PSPs for complete information.

In order to ensure that information provided under these Regulations is also processed in line with the Data Protection (Jersey) Law 2005, a PSP must:

- have regard, in particular, for the seventh data protection principle (on data security); and
- ensure that its terms and conditions of business (or other communication) with each payer include reference to the information that it may provide - under requirements set out in Regulation 6 - and provide customers with an opportunity to request the provision of substitute information for an address on transfers.

1.2 SCOPE OF THE REGULATIONS

Statutory Requirements

The Regulations are widely drawn and intended to cover all types of funds transfer that are made by electronic means other than those that are specifically exempted wholly or partially. This will include, but is not necessarily limited to, international payment transfers made via SWIFT, euro payment systems, and domestic transfers via CHAPS and BACS.

Regulation 5 specifically exempts the following payment types:

- Transfers where both the payer and the payee are PSPs acting on their own behalf. For example, this will include MT 200 series payments via SWIFT, and MT 400 and MT 700 series messages when they are used to settle trade finance obligations between banks.
- Transfers by credit or debit card or similar payment instrument, providing that the payee has an agreement with the PSP permitting payment for goods or services and that the transfer is accompanied by a unique identifier permitting the transaction to be traced back to the payer⁶.
- Transfers whereby the payer withdraws cash from his or her own account. This is designed to exempt ATM and “cash-back” withdrawals outside the UK Payment Area - which would otherwise attract the complete information requirement.
- Transfers to public authorities in the UK Payment Area for taxes, fines or other levies.
- Direct debits, subject to their carrying a unique identifier for tracing purposes.
- Truncated cheques (cheques are otherwise paper to which the Regulations do not apply).
- E-money transfers where the transfer does not exceed €1,000, and the transfer is transacted using (i) non-reloadable electronic money products on which the maximum load does not exceed €150, or (ii) reloadable e-money products which are subject to a maximum load of €2,500 in a calendar year and maximum redemption of under €1,000 in the same calendar year.

⁶ Regulation 5 gives no explicit exemption from the requirement to include complete payer information for a variety of credit and debit card payments outside the UK Payment Area (e.g. charitable donations, balance transfers, person-to-person payments, and loads to stored value e-money cards and accounts). It is unclear how, in practice, complete information can be included in such situations. This issue is still under discussion.

- Pre-paid transfers carried out by means of a mobile phone where the payment does not exceed €150.
- Transfers carried out by mobile phone, or any other digital or IT device, subject to various conditions, including their traceability and that they relate to the provision of goods and services.

The UK credit clearing system is outside the scope of the Regulations as it is paper based and hence transfers are not carried out “by electronic means”. Cash and cheque deposits over the counter via bank giro credits are not therefore affected by the Regulations.

1.3 OUTGOING TRANSFERS

1.3.1 Transfers for non-account holders

Statutory requirements

Under Regulation 6, where a PSP is seeking to make a transfer at or in excess of €1,000 in a single transaction or in a series of transactions, it is required to obtain customer identification information on the payer, verify that information, and record that information. Where a customer is seeking to make a payment below the €1,000 threshold then verification of customer identification information is not required⁷.

In the case of a transfer to a PSP in the UK Payment Area, the transfer must include a unique identifier (which can trace a transaction back to the customer). If requested by the payee’s PSP, complete information on the payer must be provided by the PSP within three working days⁸.

In the case of a transfer to a PSP in any other jurisdiction, the transfer must include the following customer identification information:

- Customer name.
- Unique identifier (which can trace a transaction back to the customer).
- Customer address⁹ (or customer date and place of birth, or national identity number, or customer identification number).

The Regulations distinguish between a “customer identification number” and “unique identifier”. The latter could be a transaction number that allows a payment to be traced back to a payer.

⁷ PSPs may find it simpler to apply common requirements to all payments made for non-account holders.

⁸ The first working day starts the day after the request is received by the payer’s PSP.

⁹ Residential or postal.

1.3.2 Transfers for account holders

Statutory requirements

Under Regulation 6, where a customer is seeking to make a transfer from an account, PSPs are required to:

- obtain customer identification information on the payer, verify that information, and record that information; or
- have conducted identification procedures and retained records on the account in line with the requirements of the Money Laundering Order.

In the case of a transfer to a PSP in the UK Payment Area, the transfer must include a customer account number (or unique identifier if there is no account number). If requested by the payee's PSP, complete information must be provided by the PSP within three working days¹⁰.

In the case of a transfer to a PSP in any other jurisdiction, the transfer must include the following customer identification information:

- Customer name.
- Customer account number¹¹ (or unique identifier if no account number).
- Customer address¹² (or customer date and place of birth, or national identity number, or customer identification number).

Regulatory requirements

In the case of a payer that is a company, a wire transfer must be accompanied by an address at which the company's business is conducted. In the case of a payer that is a trustee, a wire transfer must be accompanied by the address of the trustee.

Guidance Notes

The verification requirement set out in Regulation 6 will be met for an account holding customer of a PSP where identity has already been verified, and is stored, in accordance with the Money Laundering Order. This position applies even though the address shown on the payment transfer may not have been specifically verified under the Money Laundering Order.

Where an account holding customer relationship was established before 1 July 1999, then no further verification of such account holders will be required where the relationship is included in a verification remediation programme, though PSPs may wish to exercise discretion to verify

¹⁰ The first working day starts the day after the request is received by the payer's PSP.

¹¹ An international bank account number ("IBAN") may be provided.

¹² Residential or postal

customer identification information in individual cases, for example, where a request to make a transfer identifies higher risk factors.

The terms “customer name” and “customer address” are not defined further in the Regulations. A PSP may demonstrate that it has met its legal obligation to transfer customer name and customer address where it includes the information as it stands on the PSP’s database.

In the case of a joint account, a PSP may demonstrate that it has met its legal obligation to provide a customer name where, dependent upon the size of the field, it provides the name of either or both account holders.

1.3.3 Substitution of payer information

Guidance notes

In order to demonstrate compliance with Regulation 6, the PSP of the payer should deploy substitutes for address in order to meet particular needs, e.g. in order to comply with the seventh principle of the Data Protection (Jersey) Law 2005, or at the specific request of a customer¹³. So long as there are particular needs, no restriction is placed on the use of substitute information.

“Customer identification number” (“CIN”) is not a defined term in the Regulations. A CIN could be an internal reference number that is created by a PSP. A CIN could be a number that is contained in an official document. A CIN could also be some other number, but, in any event, it must uniquely identify a particular payer.

Where a PSP is itself the payer (i.e. acting as principal), as will sometimes be the case even for SWIFT MT 102 and 103 messages, the requirement to provide name, address, and account number may be met by the provision of a bank identifier code (“BIC”), though an account number must be included where this is available. The same applies to Business Entity Identifiers (“BEIs”), although in this case the account number should always be included. As the use of BICs and BEIs is not specified in Special Recommendation VII, there may be requests from payee PSPs for address information.

1.3.4 Electronic banking

Guidance Notes

Generally, PSPs will populate information fields from their customer database. In cases where electronic banking customers, e.g. trust company businesses, input their details directly, a payer PSP may demonstrate that it is compliant with Regulation 6, where:

- the population of such information is covered by terms and conditions of business; and
- outgoing payment traffic is subject to an appropriate level of post-event risk-based sampling to detect missing or incomplete information,

¹³ The payee PSP will be at liberty to reject the transfer in the event that an address is not provided.

notwithstanding that, at the time that the account is debited, it has not validated the information on the payer included in the transfer against information on the account holder whose account number is stated on the payment transfer.

1.3.5 Use of payer name other than that of customer

Guidance Notes

In cases where an electronic banking customer inputs information directly, **and** where the payer named is not the account holder **and** has not been verified by the PSP, a payer PSP may demonstrate compliance with Regulation 6 where:

- it retains all relevant data for five years;
- the use of alternative payer names is covered by terms and conditions of business with the account holder; and
- outgoing payment traffic is subject to an appropriate level of post-event risk-based sampling to detect non-compliance with terms of business.

It is important to note that this flexibility should not undermine the transparency of payer information sought by Special Recommendation VII. It is designed to meet the practical needs of corporate and other business account holders who, for internal accounting reasons, may have legitimate reasons for quoting alternative payer details with their account number, e.g. where payments for subsidiary companies are made by a parent company.

Where payment instructions are received directly by a PSP, e.g. over the counter, it may demonstrate compliance with Regulation 6 where a transfer includes a name other than that of the customer so long as the PSP:

- is entirely satisfied that the reason for using another name is legitimate; and
- it retains all relevant data for five years.

1.3.6 Batch files – payments either inside or outside of the UK Payment Area

Statutory requirement

Under Regulation 8, batch files from a single payer to multiple payees must carry the information required for the payer (which will depend on whether the PSP of a payee is located within or outside the UK Payment Area). However, the individual transfers within the batch file need only carry the payer's customer account number (or unique identifier if there is no account number).

1.3.7 Record-keeping

Statutory requirements

In accordance with Regulation 6, customer identification information must be retained for five years.

1.4 INCOMING TRANSFERS

1.4.1 Checking for incomplete information

Overview

Regulations 9, 10, and 11 require PSPs to check that incoming payments contain the required customer identification information (which will depend on whether the payer's PSP is located within or outside the UK Payment Area).

PSPs will need to be able to identify empty message fields, to undertake sample testing to identify fields containing missing or incomplete information, and where information is missing or incomplete, to take specified action.

Statutory requirements

Under Regulation 9 (requirement to detect absence of information), a PSP must:

- detect that fields within the messaging or payments and settlements system used to effect a transfer have been completed in accordance with the characters or inputs admissible within the conventions of that system, i.e. ensure that validation rules of whichever messaging or payment system used are being utilised¹⁴; and
- have effective procedures in place in order to detect the absence of information on the payer.

Under Regulation 10, if a PSP becomes aware in the course of processing a payment that it contains incomplete information, it must:

- reject the transfer; or
- ask for complete information on the payer; or
- take such other action as is provided for by Order made by the Minister for Treasury & Resources,

¹⁴ SWIFT payments on which mandatory payer information fields are not completed will fail anyway and the payment will not be received by the payee PSP. Current SWIFT validation prevents payments being received where the mandatory information is not present at all. However, it is accepted that where the payer information fields are completed with incorrect or meaningless information, or where there is no account number, the payment will pass through the system. SWIFT is currently considering how its validation standards might be improved to respond more effectively to the requirements of FATF Special Recommendation VII. Similar considerations apply to non-SWIFT messaging systems which also validate that a field is populated in accordance with the standards applicable to that system, e.g. BACS.

except where to do so would contravene any other provision of an enactment.

Under Regulation 10, where the PSP of a payee becomes aware subsequent to processing that a payment contains incomplete information, it must:

- ask for complete information on the payer; or
- take such other action as is provided for by Order made by the Minister for Treasury & Resources,

except where to do so would contravene any other provision of an enactment.

Regulation 10 also sets out the action required to be taken where a PSP regularly fails to supply the information on the payer required by the Regulations. Where a PSP is identified as having regularly failed to comply with the information requirements, the payee PSP must take steps, which may initially include issuing warnings and setting deadlines, prior to either refusing to accept further transfers from that PSP or deciding whether to restrict or terminate its relationship with that PSP either completely or in respect of funds transfers.

Regulatory requirements

A PSP must subject incoming payment traffic to an appropriate level of post-event risk-based sampling to detect non-compliant payments.

Guidance Notes

A PSP may demonstrate an appropriate level of sampling, where that sampling is weighted to transfers from PSPs:

- located in jurisdictions that have failed to implement or adequately implement Special Recommendation VII;
- located in higher risk jurisdictions;
- that are higher value transfers; and
- that are identified by such sampling as having previously failed to comply with the relevant information requirement.

Other specific measures might be considered, e.g. checking, at the point of payment delivery, that payer information is compliant and meaningful on all transfers that are collected in cash by payees on a “pay on application and identification” basis.

Transfers from jurisdictions which provide in legislation for a threshold of €1,000 or US\$1,000 below which the provision of complete information on outgoing payments is not required¹⁵ will be

¹⁵ This is permitted by the Interpretative Note to FATF Special Recommendation VII. The USA is a case in point.

addressed in an Order made by the Minister for Economic Development. Under the Order, it will be reasonable for a risk-based view to be taken on whether or not to reject the transfer or request further information.

1.4.2 Suspicious activity reporting procedures

Statutory requirements

Under Regulation 11, PSPs will need to ensure that where an employee knows, suspects or has reasonable grounds to suspect that a person is engaged in money laundering or terrorist financing, in whole or in part due to missing or incomplete information on the payer being provided, that employee submits a suspicious activity report to the Joint Financial Crimes Unit.

1.4.3 Record-keeping

Statutory requirements

In accordance with Regulation 12, customer identification information must be retained for five years.

1.5 INTERMEDIARY PAYMENT SERVICE PROVIDERS

Overview

Intermediary PSPs, for example those that act as agents for other payment service providers or who provide correspondent banking facilities, will need to meet the requirements set out for intermediary payment service providers.

Statutory requirements

Intermediary PSPs must, subject to technical limitations, ensure that all information received on a payer which accompanies a wire transfer is sent with the transfer.

It is preferable for such a PSP to forward transfers through a system which is capable of carrying all the information received with the transfer. However, where an PSP is technically unable to on-transmit payer information, it may nevertheless use a system with technical limitations provided that:

- if it is aware that the payer information is incomplete it must concurrently advise the payee's PSP of the fact by an agreed form of communication, whether within a payment or messaging system or otherwise; and
- it retains records of any information received for five years, whether or not the information is complete.

If requested to do so by the payee's PSP, the PSP must provide the payer information within three working days of receiving the request¹⁶.

¹⁶ The first working day starts the day after the request is received by the intermediary PSP.