

Update on proceeds of crime and legal overseas cannabis Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 2021 (the Regulations) Coming into force on 7 July 2021

UPDATE

Update prepared by Simon Gould (Jersey)

Many financial services businesses will have experienced difficulties over the last few years as a result of involvement with clients who have a direct or indirect exposure to the cannabis sector in foreign jurisdictions where recreational cannabis has been legalised, typically resulting in those clients' assets being frozen in Jersey.

Background

The specific difficulty arises from the fact that Jersey's Proceeds of Crime legislation has always applied a 'single criminality' test, that is to say that 'criminal conduct' is determined by reference to Jersey law only, regardless of the law of the place where the conduct occurred.

Any direct or indirect involvement with the overseas legal cannabis sector has consequently triggered suspicious activity reporting requirements, tipping-off restrictions and freezing of assets. This has created tensions where the business activity is legal in the place where it occurred and part of a rapidly expanding sector of the economy in countries such as Canada and the United States, but is still illegal in Jersey. For the same reasons, it has been difficult or impossible for the JFCU to give their consent to any dealing with overseas cannabis proceeds, with the result that assets held in Jersey are frozen indefinitely.

Proposal

The new Regulations passed by the States of Jersey today have now addressed this issue by proposing an amendment to the definition of 'criminal conduct' in the Proceeds of Crime Law to exclude 'the production, supply, use, export or import of cannabis and any of its derivatives that is lawful where and when it occurs and occurs in a [specified] jurisdiction outside Jersey'.

The Minister for External Relations also intends to make an Order specifying the jurisdictions to which this change will apply, based on the outcomes of mutual evaluation reports carried out against the FATF Standards.

Points to consider

Whatever one thinks about cannabis, this is a positive change allowing Jersey to continue dealing with specified jurisdictions that take a different approach to us in determining which economic activity in their country is criminal and which is legal.

However, there will still be a couple of points that Jersey financial services businesses should check before concluding that proceeds of the overseas cannabis sector are not generated from 'criminal conduct' under Jersey law, as follows:

- the cannabis related activities that generated the proceeds must have been lawful in the place *where* and *when* they took place; and
- those activities must have occurred in one of the specified jurisdictions.

As there are several components to those cannabis related activities, from production to importation, which are likely to take place in different jurisdictions and at different times, financial services businesses in Jersey

will have to check that each of the activities that generated proceeds, were lawful where, and at the time when, they took place, as well as making sure that there were no unspecified jurisdictions involved.

This does however mean that, once it has been established that these tests were met, the cannabis proceeds will no longer be the proceeds of crime under Jersey law, even if they were generated prior to the Regulations coming into force.

We have extensive experience in addressing the legal and regulatory implications of exposure to the cannabis sector. If you would like to discuss the appropriate steps to take to ensure ongoing compliance in this area, please do get in touch.

Contacts



Mathew Cook
Partner I Advocate
Mourant Ozannes (Jersey) LLP
+44 1534 676 371
mathew.cook@mourant.com



Simon Gould
Partner
Mourant Ozannes (Jersey) LLP
+44 1534 676 367
simon.gould@mourant.com

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