

Cannabis Investment gets the ‘green light’

Investment in the cannabis industry has grown significantly in recent years, especially since the listing of a number of equities on international stock exchanges and the launch of numerous exchange-traded funds relating to the cannabis industry.

Until recently however, the wording of Jersey’s Proceeds of Crime (Jersey) Law 1999 (“**POCL**”) meant that investors in cannabis-related companies risked having their assets informally frozen on the basis that they were considered to be dealing with the ‘proceeds of crime’. The problem arose due to Article 1(1) of POCL which defined ‘criminal conduct’ as conduct which “*if it occurs or has occurred outside Jersey, would have constituted...an offence in Jersey*”. This applied regardless of the lawfulness of the activity in the foreign jurisdiction with the effect, for example, that an investment in a listed foreign company involved in the cannabis sector would be regarded as the proceeds of crime given that the growth and supply of cannabis for non-medicinal purposes remains illegal under Jersey law.

POCL also requires any person who knows or suspects that a transaction may involve the proceeds of crime to file a suspicious activity report (“**SARs**”) informing the Jersey Financial Crimes Unit (the “**JFCU**”) of the relevant transaction. The JFCU may provide consent for the transaction to go ahead as anticipated; if so, the JFCU consent acts as a defence in the event the funds do transpire to be the proceeds of criminal activity. Whilst the JFCU’s withholding of consent does not prevent the transaction going ahead, the reality is that financial services businesses are loath to proceed with a transaction where they know they may well be prosecuted in the event that the proceeds later turn out to be the proceeds of crime.

Financial services businesses dealing with cannabis-related investments invariably therefore filed SARs requesting the JFCU’s consent to operate the account as requested by their clients. The JFCU’s position in relation to such SARs was to acknowledge them but not provide formal consent to any transactions requested. Given the potentially very serious criminal, regulatory and reputational issues at stake, many financial institutions chose to take the prudent step of not taking any further action. The result, from a client’s perspective, was that the client’s funds were ‘informally frozen’ as the bank would not operate the account in accordance with their instructions.

The position in relation to investment in cannabis-related companies has now been clarified by the Jersey legislature passing two amendments to POCL. Firstly, the Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 2021 expressly excludes from the definition of “*criminal conduct*” in POCL “*the production, supply, use, export or import of cannabis or any of its derivatives that – (i) is lawful where and when it occurs, and (ii) occurs in a jurisdiction outside Jersey that the Minister for*

BRIEFING NOTE

External Relations and Financial Services may by Order specify". Secondly, the Minister for External Relations has signed into force the Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Jersey) Order 2021 by which 32 jurisdictions have been designated as relevant jurisdictions the purposes of the amendment to POCL. Both provisions came into force on 7 July 2021 and apply retrospectively.

These legislative amendments provide much-needed and welcome clarity for investors and will undoubtedly be welcome news for clients interested in investing in cannabis-related businesses. Care will still need to be taken to ensure both that the cannabis-related activity is lawful in the jurisdiction that it took place in and that the jurisdiction is one of the 32 specified by regulations. Doing so will ensure that such activities fall entirely outside the scope of POCL.

Dickinson Gleeson has represented a number of clients whose assets have been informally frozen under the POCL regime, both in relation to cannabis-related activities and otherwise.

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