

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 2) REGULATIONS, 2023

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023" dated 5th June, 2023 of the Policy & Resources Committee, they are of the opinion to approve, in pursuance of section 54(1A) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023.

The above Proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 2) REGULATIONS, 2023

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

5th June, 2023

Dear Sir

1. Executive summary

- 1.1 This Policy Letter explains proposed changes to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Proceeds of Crime Law”) and requests the States to approve the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023 (the “POC Regulations”) which accompany this Policy Letter and which, together with regulations previously made by the Committee (the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023 – the “No. 1 Regulations”), implement those changes.
- 1.2 The POC Regulations cannot come into force unless and until approved by Resolution of the States of Deliberation; the No. 1 regulations by contrast are subject to a different legislative procedure and are being laid before the States which may annul them in the usual way (further explained at paragraph 8.1 below, “legislative procedure”).
- 1.3 The proposed changes are part of the Bailiwick of Guernsey’s response to ensuring compliance with the current standards of the Financial Action Task Force, a response which will be assessed in the forthcoming 2024 evaluation of Guernsey by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (“Moneyval”).

2 The six directorship exemption

- 2.1 The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020 (the “Fiduciaries Law”) prohibits persons from acting, by way of business, as director of any company, wherever incorporated, except

under the authority of a fiduciary licence granted by the Guernsey Financial Services Commission (the “Commission”).

- 2.2 There is however an exemption for individuals acting as director of not more than six companies, being directorships which are not the subject of any other exemption under the Fiduciaries Law. Individuals benefitting from this exemption do not therefore require a personal fiduciary licence to hold directorships falling within the exemption.

3 Existing AML/CFT obligations

- 3.1 Holders of a fiduciary licence are deemed to be a financial services business under the Proceeds of Crime Law and are therefore subject to the anti-money laundering and counter terrorist financing obligations set out in Schedule 3 to that Law and the rules in the Commission’s Handbook on Countering Financial Crime and Terrorist Financing (the “AML/CFT obligations”).
- 3.2 Individuals acting as director by way of business who benefit from the six directorship exemption, although not required to hold a fiduciary licence, nonetheless remain subject to the Proceeds of Crime Law and must currently comply with AML/CFT obligations.
- 3.3 The AML/CFT obligations applicable to such individuals include corporate governance, risk assessment, identification and other due diligence measures in respect of beneficial owners of the companies on which they serve (although not customers), monitoring of transactions and activity, the reporting of suspicion, employee screening, training, and record keeping.
- 3.4 However, although the Commission has power to disapply the six directorship exemption under section 32 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the “Enforcement Powers Law”) if, for example, the individual has committed an offence under any of the supervisory Laws or the Commission determines that the individual is not fit and proper to be a director of a company, this sanction can only be applied where there is a specific and proven default. It does not establish any system to monitor or verify compliance by directors with the AML/CFT obligations.

4 The Moneyval recommendation

- 4.1 However, although the Commission has power to disapply the six directorship exemption under section 32 of the Enforcement Powers Law if, for example, the individual has committed an offence under any of the supervisory Laws or the Commission determines that the individual is not fit and proper to be a director of a company, this sanction can only be applied where there is a specific and proven default. It does not establish any system to monitor or verify compliance by directors with the AML/CFT obligations.

- 4.2 This point was highlighted in Moneyval's 2015 Report on its Fourth Assessment Visit of Guernsey, where it issued a recommendation stating that the Bailiwick –

“...should take measures to ensure effective compliance with the AML/CFT requirements in respect of persons acting as a director (for less than six companies) without a personal fiduciary licence but who are subject to the AML/CFT requirements through effective supervision of these directors”.

- 4.3 In 2024 Moneyval will assess how Guernsey has addressed the point made in its 2015 report. The proposals in this Policy Letter provide a mechanism for the Commission to monitor and verify compliance with the AML/CFT obligations by those individuals who fall within the six directorship exemption. This will in turn expand the scope of the Commission's monitoring powers and thus enhance the effectiveness of the Bailiwick's supervisory framework vis à vis individual directors.

5 The regulations

- 5.1 The POC Regulations therefore make changes to the supervisory framework surrounding the six directorship exemption. They amend Schedules 3 and 5 to the Proceeds of Crime Law to bring individuals benefitting from that exemption within the ambit of –

- (a) the AML/CFT obligations for specified businesses under Schedule 3, but simplified and tailored to the six directorship exemption, and with certain AML/CFT obligations being disapplied (including the requirement for a registered individual to undertake risk assessments), and
- (b) the registration framework for prescribed businesses under Schedule 5, and thus subject to the Commission's supervisory powers under Schedule 5 and the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (for example, to obtain information and documents and carry out site visits).

- 5.2 The No. 1 Regulations will in turn amend Schedules 1 and 2 to the Proceeds of Crime Law by making complementary changes to bring the six directorship exemption within the definition of relevant business.

- 5.3 For the avoidance of doubt, the Regulations do not require individuals benefitting from the six directorship exemption to be licensed under the Fiduciaries Law. It is considered that this would be disproportionate in light of the wide-ranging requirements and implications of a licensing regime compared with a registration framework.

- 5.4 The No. 1 Regulations also amend the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 so that individuals benefitting from the six directorship exemption are subject to the Commission's powers in relation to prescribed businesses under that Law, for example, to obtain information; and as mentioned above, within the broader supervisory framework, the Commission has power to disapply the six directorship

exemption for contraventions of the Proceeds of Crime Law under the Enforcement Powers Law.

6 Other fiduciary exemptions unaffected

- 6.1 The proposals in this Policy Letter will affect only those individuals who currently rely on the six directorship exemption and will not affect the other exemptions under the Fiduciaries Law (for example, acting as director of a supervised body or a company quoted on a recognised stock exchange, or of a company with an established place of business in the Bailiwick which is trading locally). Neither will the proposals affect persons not acting by way of business (for example, unrewarded directors with recreational or charitable directorships).

7 Transitional period and exemptions

- 7.1 It is proposed that when the Regulations are enacted there will be a transitional period of several months for individual directors to complete the new registration requirements.
- 7.2 It is also proposed that certain categories of individual director should be exempted from the new registration requirement under Schedule 5 to the Proceeds of Crime Law (for example, where the director holds a personal fiduciary licence under the Fiduciary Law; where the company for which the directorship is held is administered by a corporate service provider that holds a fiduciary licence and acts as the resident agent of the company; and where the director is registered with the Guernsey Registry in the Register of Charities and other Non Profit Organisations).

8 Legislative procedure

- 8.1 By way of explanation, and as mentioned at paragraph 1.2 above, the POC Regulations and the No. 1 Regulations are being made separately because they are subject to different legislative procedures before the States of Deliberation. The POC Regulations are being presented to the States with a Policy Letter and cannot come into force until approved by Resolution of the States under section 54(1A) of the Proceeds of Crime Law. The No. 1 Regulations, by contrast, having been made by the Committee, will be laid before the States under section 54(1)(c) of that Law, and the States may resolve to annul them, but no affirmative action of the States is required to enact them.

9 Compliance with Rule 4

- 9.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 9.2 In accordance with Rule 4(1):
- a) The Propositions contribute to Priority 2 of the Government Work Plan by

ensuring compliance with international agreements and standards.

- b) There has been extensive consultation with industry, including a consultation paper which was circulated on 22nd November, 2022.
- c) The Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposals into effect.

9.3 In accordance with Rule 4(2):

- a) It is confirmed that the Propositions engage the mandate of the Policy & Resources Committee with respect to fiscal policy and economic affairs.
- b) It is confirmed that the Proposition has the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache
President

M A J Helyar
Vice-President

J P Le Tocq
D J Mahoney
R C Murray

GUERNSEY STATUTORY INSTRUMENT

2023 No.

**The Criminal Justice (Proceeds of Crime) (Bailiwick of
Guernsey) (Amendment) (No. 2) Regulations, 2023**

Made

5th June, 2023

Coming into operation

8th July, 2023

Approved by the States

, 2023

THE POLICY & RESOURCES COMMITTEE in exercise of the powers conferred upon it by sections 49AA(4) and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amendment of the Proceeds of Crime Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) In Schedule 3 -

(a) in paragraph 1 -

(i) in subparagraph (1), for "subparagraph (2)"
substitute "subparagraphs (2) and (3)",

^a Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

- (ii) in subparagraph (2), for "This Schedule" substitute "Save in the case of a business of the type described in paragraph 6 of Schedule 2, this Schedule", and
- (iii) after subparagraph (2), insert the following subparagraph -

"(3) Paragraphs 2, 3, 10, and 15 of this Schedule do not apply to a business of the type described in paragraph 6 of Schedule 2, but an individual carrying on by way of business the activities described in paragraph 6 of Schedule 2 who is under an obligation to register with the Commission under paragraph 2 of Schedule 5 must have regard to -

- (a) any relevant rules and guidance in the Handbook,
- (b) any relevant notice or instruction issued by the Commission under this Law, and
- (c) the NRA,

in understanding, for the purposes of this Schedule, its money laundering and terrorist financing risks, and determining, for the purposes of this Schedule, what constitute appropriate measures to manage and mitigate risks, and what constitutes a low or high risk business relationship.",

(b) in paragraph 6 -

- (i) for subparagraph (1), substitute -

"(1) Where a specified business is required to carry out customer due diligence in relation to a business relationship or occasional transaction which -

- (a) has been assessed as a low risk relationship pursuant to paragraph 3(4)(a) or in accordance with the NRA, or
- (b) in the case of a business of the type described in paragraph 6 of Schedule 2, is a relationship of a type specified in the Handbook for the purposes of this paragraph,

the business or individual (as the case may be) may, subject to the following provisions of this paragraph, apply reduced or simplified customer due diligence measures.", and

- (ii) for subparagraph 2(b) substitute -
 - "(b) where paragraph 3 applies to a specified business, by a specified business that complies with the requirements of that paragraph.",
- (c) in paragraph 7 -
 - (i) in subparagraph (2)(c) for "being carried outside" substitute "being carried out outside", and
 - (ii) after subparagraph (2), insert the following subparagraph -

"(3) In the case of a business of the type described in paragraph 6 of Schedule 2, subparagraph (2) is modified to apply as if -

- (a) the words "to do so would be consistent with the risk assessment of the business relationship

conducted pursuant to paragraph 3(4)(a), and"
were deleted, and

(b) for item (c) there were substituted the following
item -

"(c) any relevant rules and guidance in the Handbook
are complied with.".,

(d) in paragraph 11(1)(b), for "financial service" substitute
"specified",

(e) in paragraph 12, in subparagraph (4) for "deemed to have
be appointed" substitute "deemed to have been appointed",
and at the end insert the following subparagraph -

"(5) In the case of a business of the type described in paragraph
6 of Schedule 2, this paragraph is modified to apply as if for the whole paragraph
there were substituted -

"12. In the case of a specified business of the type described in paragraph
6 of Schedule 2, the individual concerned ("P") shall ensure that -

(a) in determining whether P is required to make a
disclosure under Part I of the Disclosure Law, and
sections 15 and 15A or section 12 (as appropriate) of
the Terrorism Law, P takes into account all relevant
information, and

(b) P establishes and maintains appropriate and
effective procedures as are necessary to ensure
compliance with requirements to make disclosures

under Part I of the Disclosure Law, and sections 15 and 15A or section 12 (as appropriate) of the Terrorism Law."."

- (f) at the start of paragraph 13(2) insert "Subject to subparagraph (2A),", and after paragraph 13(2) insert -

"(2A) In the case of a specified business of the type described in paragraph 6 of Schedule 2, the individual concerned ("P") shall, having regard to the money laundering and terrorist financing risks to the company or companies of which P is a director, maintain an understanding of the relevant enactments, this Schedule (including any guidance, instructions, notices or other similar instruments issued or made under this Schedule) and the Handbook, and of P's obligations thereunder."

- (g) in paragraph 14, after subparagraph (6), insert the following subparagraph -

"(7) In the case of a business of the type described in paragraph 6 of Schedule 2, this paragraph is modified to apply as if -

- (a) in subparagraph (2)(a), ", risk assessments undertaken under paragraph 3(4)," were deleted, and

- (b) subparagraphs (3), (5)(b), (c) and (d) were deleted."

and

- (h) in paragraph 21, in the definition of "Appendix C business", after sub-item (C) insert "but does not include a

business of the type described in paragraph 6 of Schedule 2,".

(3) In Schedule 5 -

(a) in paragraph 1, renumber the existing text as subparagraph (1), and at the start of subparagraph (1) insert "Save in the case of a business of the type described in paragraph 6 of Schedule 2 in respect of which subparagraphs (2) and (3) apply," and

(b) after subparagraph (1) insert -

"(2) In relation to a prescribed business of the type described in paragraph 6 of Schedule 2, for the purpose of establishing whether an individual is acting as a director of not more than six companies within the meaning of section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020 the following categories of company shall be discounted -

(a) companies registered in the Bailiwick that are administered by a corporate services provider, and

(b) companies registered in the Register of Non Profit Organisations established under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

(3) For the purposes of this paragraph -

- (a) a company is "**administered by a corporate services provider**" if the corporate services provider -
 - (i) acts as the resident agent of the company, and
 - (ii) provides administration services to the company that are additional to -
 - (A) company secretarial services, and
 - (B) the undertaking of the duties imposed on resident agents by Part XXIX of the Companies (Guernsey) Law, 2008, or Part XXIA of the Companies (Alderney) Law, 1994 (as the case may be), and
- (b) "**corporate services provider**" and "**resident agent**", in relation to companies registered under the Companies (Guernsey) Law, 2008, have the same meanings as in that Law, and in relation to companies registered under the Companies (Alderney) Law, 1994, have the same meanings as in that Law.",
- (c) in paragraph 2 -
 - (i) after subparagraph (1), insert the following paragraph -

"(1A) Subparagraphs (3) and (4) do not apply to a business of the type described in paragraph 6 of Schedule 2, in respect of which subparagraph (3A) applies.",

(ii) after subparagraph (3), insert the following subparagraph -

"(3A) A business to which this paragraph applies and which, by virtue of subparagraph (1), is under an obligation to register, shall submit, and pay, to the Commission -

(a) a statement, in such form and manner as the Commission may determine, of -

(i) the name, residential address and date of birth (together with details of any prior names) of the individual who is carrying on by way of business the activities described in section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020,

(ii) details of any insolvency or director disqualification of that individual, whether in the Bailiwick or elsewhere,

(iii) in relation to each directorship held by the individual -

(A) the legal name and any trading names of the company,

(B) its place and date of incorporation,

(C) the address of its registered office,

(D) details of the nature of the activities it carries out, and the location or locations from where they are carried out,

(E) the individual's ownership interest in the company, and

(F) the country or territory of residence of the company's beneficial owners, and

(b) a non-refundable registration fee of £75.",

(iii) for subparagraph (5), substitute -

"(5) Subject to subparagraph (5A), on receipt of -

(a) a statement containing all the information referred to in subparagraph (3)(a) or (3A)(a) (as the case may be), and

(b) the registration fee referred to in subparagraph (3)(b) or (3A)(b) (as the case may be),

the Commission shall register the prescribed business.

(5A) The Commission may refuse to register a business of the type described in paragraph 6 of Schedule 2 in circumstances where the individual carrying on the business -

- (a) is or has been insolvent or disqualified as a director, whether in the Bailiwick or elsewhere,
- (b) has had the exemption from the operation of section 1 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020 conferred by section 3(1)(g) of that Law disappplied by the Commission under section 32 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, or
- (c) is not, in the opinion of the Commission, currently undertaking the activity set out in section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020.", and
- (iv) at the end of subparagraph (7) insert ", and in this paragraph **"insolvent"** means that -
 - (a) the individual has been declared by the Royal Court to be insolvent,
 - (b) the affairs of the individual have been declared in a state of "désastre" by his or her arresting creditors at a meeting before a Commissioner,

- (c) a preliminary vesting order has been made against the individual in respect of any of his or her real property in the Bailiwick,
- (d) a composition or arrangement with creditors has been entered into in respect of the individual whereby the individual's creditors will receive less than 100p in the pound or that possession or control has been taken of any of the individual's property or affairs by or on behalf of creditors, or
- (e) an event, measure or procedure has occurred outside of the Bailiwick in relation to the person which corresponds as nearly as may be to any event, measure or procedure described in paragraphs (a) to (d),

and "**insolvency**" shall be construed accordingly.",

(d) in paragraph 3 -

- (i) in subparagraph (2), for "under paragraph 2(2)(b) (subject to any reduction applicable under paragraph 2(3))", substitute "under paragraph 2(3)(b) or 2(3A)(b) (as the case may be) (subject to any reduction applicable under paragraph 2(3)(b))",
- (ii) in subparagraph (3), for "paragraph 2(2)(a)(i) to (v)" substitute "paragraph 2(3)(a)(i) to (v) or 2(3A)(i) to (iii) (as the case may be)", and

(iii) in subparagraph (4), after "A prescribed business" insert "(other than a business of the type described in paragraph 6 of Schedule 2, in respect of which subparagraph (5) applies)",

(iv) after subparagraph (4), insert -

"(5) In relation to a business of the type described in paragraph 6 of Schedule 2, an individual carrying on by way of business the activities described in that paragraph must provide to the Commission each year, by a date specified by the Commission on the website of the Commission, a statement of the directorships held by the individual.",

(e) in paragraph 5 -

(i) for the title, substitute "**Suspension or revocation of registration**",

(ii) in subparagraph (1), after "suspend" insert "or revoke",

(iii) after subparagraph (1) insert the following subparagraph -

"(1A) The Commission may suspend or revoke the registration of a business of the type described in paragraph 6 of Schedule 2 in any of the circumstances described in paragraph 2(5A).",

(iv) in subparagraph (2), for "subparagraph (1)" substitute "subparagraph (1) or (1A)", and

- (v) after subparagraph (3), insert the following subparagraph -

"(4) The revocation of a registration in pursuance of subparagraph (1) or (1A) shall take effect on service to the prescribed business concerned of a notice in writing, or at such later date as may be specified in the notice.

(5) The revocation of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission withdraws the revocation."

- (f) in paragraph 7(1), at the start of both subparagraph (b) and subparagraph (c) insert "subject to subparagraph (1A)", and after subparagraph (1) insert -

"(1A) Before the Commission makes the list referred to in subparagraph (1) available under subparagraph (1)(b) or publishes it under subparagraph (1)(c), it shall remove from the list the names and other details of individual persons carrying on by way of business the activities described in paragraph 6 of Schedule 2.", and

- (g) in paragraph 9(1), after "a decision of the Commission to impose, vary or rescind any condition in respect of the person's registration under paragraph 4" insert ", or to refuse to register a prescribed business under paragraph 2(5A), or to suspend or revoke a business's registration under paragraph 5(1A),".

Transitional provisions.

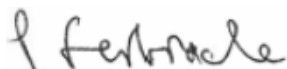
2. (1) Paragraph 20 of Schedule 3 (offences: general) and paragraph 11 of Schedule 5 (offences: general) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall not apply to a paragraph 2(3A) business until 1st October 2023.

(2) In this regulation, a "**paragraph 2(3A) business**" is one to which paragraph 2(3A) of Schedule 5 applies, that is, a business of the type described in paragraph 6 of Schedule 2 which, after these Regulations come into force, is under an obligation to register with the Commission under paragraph 2 of Schedule 5.

Citation and commencement.

3. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023, and shall come into force on the 8th day of July, 2023.

Dated this 5th day of June, 2023



P.T.R. FERBRACHE

President of the the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023 - the "**No. 1 Regulations**") make changes to the supervisory framework surrounding the six directorship exemption from the requirement to hold a personal fiduciary licence under Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020. These

Regulations amend Schedules 3 and 5 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("**the Proceeds of Crime Law**"), and the No. 1 Regulations will amend Schedules 1 and 2 to that Law, to bring individuals benefitting from the six directorship exemption within the ambit of the registration framework for prescribed businesses under Schedule 5 to the Proceeds of Crime Law. The No. 1 Regulations also amend the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 so that individuals benefitting from the six directorship exemption are subject to the Commission's powers in relation to prescribed businesses under that Law, e.g. to obtain information. It should be noted that within the broader supervisory framework, the Guernsey Financial Services Commission has power to disapply the six directorship exemption for contraventions of the Proceeds of Crime Law. The Regulations also correct several minor typographical errors in the Schedules.

These Regulations and the No. 1 Regulations are being made separately because they are subject to different legislative procedures before the States of Deliberation – these Regulations will be presented to the States with a policy letter and cannot come into force until approved by Resolution of the States; the No. 1 Regulations, when made by the Committee, will be laid before the States, which may annul them.

If approved, these Regulations will come into force on the 8th day of July, 2023.