

# STATES OF JERSEY



## **DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (No. 5) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 29th January 2018  
by the Chief Minister**

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**STATES GREFFE**





Jersey

## **DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (No. 5) (JERSEY) REGULATIONS 201-**

### **REPORT**

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#### **Overview of the draft Regulations**

The draft Regulations amend the Financial Services (Jersey) Law 1998 (“FS(J)L”) to exclude from the definition of “principal person” any shareholder controller of a company that is an AIF (alternative investment fund) as defined in the Alternative Investment Funds (Jersey) Regulations 2012 (“AIF Regs”).

This means that a shareholder controller who, either alone or with any associate or associates –

- (a) directly or indirectly holds 10% or more of the share capital issued by the company,
- (b) is entitled to exercise or control the exercise of not less than 10% of the voting power in general meeting of the company or of any other company of which it is a subsidiary, or
- (c) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company,

will no longer be considered a principal person under FS(J)L, provided the company in question is also a Jersey AIF.

The AIF Regs define what an AIF (alternative investment fund) is in the context of a company (a “Jersey AIF”) –

1. It must be an alternative investment fund within the meaning given in Directive 2011/61/EU (the EU Alternative Investment Fund Managers Directive).
2. It must be marketed in a Member State of the EU or other EEA State.
3. It must be registered as a Jersey company with the Jersey Financial Services Commission (JFSC).

#### **Reason for amendment**

It is thought that the principal person requirements under FS(J)L in respect of a shareholder controller is too burdensome in the case where such person is a shareholder controller of a company that is a Jersey AIF. These companies are essentially Jersey private investment funds that are offered/marketed to no more than 50 investors.

A Jersey company that is also a Jersey AIF is required to obtain 2 authorisations from the Jersey Financial Services Commission before it may be marketed to investors –

1. A certificate pursuant to the AIF Regs for the fund (i.e. the company); and
2. Authorisation pursuant to FS(J)L because the company (via its directors) is in the business of managing an AIF (i.e. managing itself as the company).

As a result of the company being authorised under FS(J)L, all principal persons of that company must notify the JFSC of their intention to become a principal person (by completing a personal questionnaire) and must receive a 'no objection' letter from the JFSC before they become a principal person of the company.

However, the draft Regulations mean that shareholder controllers of companies that are Jersey AIFs will no longer need to seek prior approval from the JFSC, as they will not be considered to be principal persons.

It should be noted that the principal person test will continue to operate for all the directors of a company that is a Jersey AIF, and any other person who is instructed by a director of the company or a director of a parent company to act. Therefore it is considered that there is sufficient regulatory oversight of principal persons of companies that are Jersey AIFs under both FS(J)L and the AIF Regs.

#### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

#### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of the draft Regulations.

## Explanatory Note

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These Regulations amend the Financial Services (Jersey) Law 1998 to exclude from the definition “principal person” any shareholder controller (as defined by Article 1(1) of the Financial Services (Jersey) Law 1998) of a company that is a Jersey AIF (*Regulation 1(b)*). These Regulations also insert a definition in Article 1(1) of the Financial Services (Jersey) Law 1998 for the term “Jersey AIF” so that it has the meaning given to “AIF” by Regulation 3 of the Alternative Investment Funds (Jersey) Regulations 2012 (*Regulation 1(a)*).

*Regulation 2* sets out the title of these Regulations and provides for them to come into force 7 days after they are made.





Jersey

## **DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (No. 5) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 4(2) of the Financial Services (Jersey) Law 1998<sup>1</sup>, have made the following Regulations –

### **1 Financial Services (Jersey) Law 1998 amended**

In Article 1(1) of the Financial Services (Jersey) Law 1998<sup>2</sup> –

- (a) after the definition “investment business” there shall be inserted following definition –
  - “ ‘Jersey AIF’ has the meaning given to ‘AIF’ by Regulation 3 of the Alternative Investment Funds (Jersey) Regulations 2012<sup>3</sup>;”;
- (b) in the definition “principal person”, in sub-paragraph (b), after clause (iii) there shall be added the following words –
  - “but not including, in relation to a company that is a Jersey AIF, any shareholder controller of that company;”.

### **2 Citation and commencement**

These Regulations may be cited as the Financial Services (Amendment of Law) (No. 5) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- <sup>1</sup> *chapter 13.225*  
<sup>2</sup> *chapter 13.225*  
<sup>3</sup> *chapter 17.245.51*