

# STATES OF JERSEY



## **DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (NO. 6) (JERSEY) REGULATIONS 202- (P.54/2023): COMMENTS**

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**Presented to the States on 16th August 2023  
by the Economic and International Affairs Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Background

The Draft Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202-[P.54/2023](#) (the draft Regulations) and the associated Draft Financial Services (Amendment of Schedules to the Law) (No. 3) (Jersey) Order 202- (the draft Order) will, if adopted, bring enhanced regulation in Jersey's Investment Business regime.

The draft Regulations and associated draft Order (together the proposed Amendments) have been brought forward following recommendations made by the Jersey Financial Services Commission (the JFSC) who have undertaken development and consultation on the proposed Amendments since 2019.

The proposed Amendments will, if adopted, introduce new regulation of arranging investments in the retail market and operating an investment exchange, as well as provide clarification for, update and align definitions within the [Financial Services \(Jersey\) Law 1998](#) (the Financial Services Law).

The Panel questioned the Assistant Chief Minister with Responsibility for Financial Services (the Assistant Chief Minister) on the formation of the proposed amendments,<sup>1</sup> and has produced these comments to highlight additional points to aid in the Assembly's considerations.

### Development of the proposed Amendments

The Panel has been informed that the proposed Amendments are part of a package of amendments recommended by the JFSC to align Jersey's investment business regime with international rules. This follows the International Organization of Securities Commissions' (IOSCO) review of its regime in 2017 and the European Union's (EU) introduction of the Markets in Financial Instruments Directive 2014 ([MiFID II](#)) in 2018, with these being the framework for regulating investment markets and delivering better protections and transparency to investors.

The Assistant Chief Minister has identified that the same rules have been adopted by the United Kingdom (UK), Jersey's key market and conduit market for financial services. The first part of the package of amendments was approved by Deputy Gorst, as Minister for External Relations and Financial Services, with the changes made to the Client Asset Order in April 2022. These were to give effect to the IOSCO recommendations, which Deputy Gorst treated as a priority. The other amendments which formed part of this second package were postponed until the new Government was in place to allow the JFSC time to work with industry to resolve those issues identified by the feedback it received to its consultations.

The Assistant Chief Minister has outlined that she has followed the guidance of the JFSC given its relevant expertise, as well as its experience and understanding of Jersey's market. The Panel has also been informed that the Assistant Chief Minister has tested the rationale for the proposed Amendments, with the assistance of her policy team, to ensure that they align to the strategic priorities set out in the [Financial Services Policy Framework](#), finding that they maintain strong adherence to international standards while maintaining the four pillars of Jersey financial services industry.

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<sup>1</sup> [Letter - Assistant Chief Minister to Economic and International Affairs Panel re P54 2023 - 07 August 2023](#)

Following consideration the Panel is supportive of the approach taken by the Government of Jersey to follow the recommendations made by the JFSC.

### **Sophisticated and High Net Worth Investors**

The proposed Amendments exempt sophisticated and high net worth investors from the scope of the legislative changes. The Panel questioned the Assistant Chief Minister on the reasoning behind this, and was informed in the correspondence of 07 August 2023 that whilst the intent of the MiFID II rules on ‘arranging’ are good for consumer protection and avoid harmful practices arising in the retail investment market, they are not as necessary or appropriate for the private arrangements made between the financially sophisticated or expert investors. The Assistant Chief Minister indicated that this would also be the case for informal unpaid recommendations or introductions made by friends or business colleagues in the ordinary course of life and business.

The Assistant Chief Minister has indicated that sophisticated and high net worth persons are more commercially sophisticated and capable of assessing for themselves, or paying for advice, to determine the appropriateness of such recommendations or introductions. As such, they are not as susceptible to the consumer harms which arise from unregulated arranging, whilst also being able to bear the financial loss if the investment goes wrong.

The Panel notes that Article 5B of the draft Order will establish that sophisticated and high net worth persons would be those undertaking investments valued at no less than £250,000 in aggregate; or taking part in collective investments certified under existing legislation; or those persons having an individual wealth or market value of no less than US\$10,000,000 or the equivalent in another currency.

The Assistant Chief Minister has identified that introducing regulation of arranging to Jersey’s International Finance Centre product market would be perceived by these types of investors to be more of a barrier to using the jurisdiction than a benefit, and it risks being perceived as an unnecessary interference in commercial relationships between parties. It has been further highlighted that Jersey, adopting a simpler and more targeted approach, will avoid much of this while still ensuring that those investors who need protection are properly protected.

Noting this explanation the Panel is supportive of the exemptions.

### **MONEYVAL**

The Panel questioned the Assistant Chief Minister’s work in updating legislation in regard to investment business during its Quarterly Hearing of 21 April 2023.<sup>2</sup> The Panel was informed that discussions were being undertaken with the financial crime team to understand implications of introducing changes during the MONEYVAL process.

The Panel has further questioned the Assistant Chief Minister on this topic and has received confirmation that the proposed Amendments have no direct relevance to the MoneyVal assessment. However, the Assistant Chief Minister has identified to the Panel that following consultation with the JFSC, the lodging of the proposed Amendments was delayed until after the summer to allow industry time to prioritise its delivery of the additional registrations required by the Anti Money Laundering/Countering the Financing of Terrorism exemptions project and its operational readiness for the MoneyVal inspection.

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<sup>2</sup> [Transcript - Quarterly Public Hearing with the Assistant Chief Minister - 21 April 2023, page 27](#)

The Assistant Chief Minister has also advised that the proposed Amendments have been reviewed to ensure that no issues arose as a consequence of the recent changes made to Schedule 2 of the Financial Services Law, as part of the MoneyVal exemption project.

### **Industry engagement and consultation**

The Panel requested further clarification of the consultation undertaken on the proposed Amendments, noting that the accompanying report to P.54/2024 identified that it was understood that industry is fully supportive of the proposed Amendments as a suite of legislative amendments to the Financial Services Law.

The Panel has been informed that prolonged and iterative consultation was undertaken by the JFSC with industry about the Draft Amendments.<sup>3</sup> Specifically, in relation to the proposed regulation of arranging, Government policy officials undertook direct engagement with the Jersey Funds Association (JFA) and worked together with the Regulator to ensure the final proposals were, in principle, acceptable to the JFA and its Technical Sub-Committee, as well as addressing the market harms the Regulator had identified.

Indeed, the Assistant Chief Minister informed the Panel that Deputy Gorst, as Minister for External Relations and Financial Services, approved the package of amendments, in principle, subject to resolving certain issues raised by industry in response to the consultations by the JFSC in December 2019 and November 2020. This expressly included further work being undertaken by the JFSC with industry in relation to its proposed regulation of the activity of “arranging”.

The JFSC has published summaries of the feedback it has received as part of its own consultations, available on its [website](#).

The Panel has been informed by the Assistant Chief Minister that she is satisfied that all relevant issues raised by industry have been appropriately addressed and the proposed Amendments are consistent with what is appropriate to Jersey and its role in the international financial markets.

The Panel has corresponded with a number of stakeholders, namely: the JFA; Association of Investment Companies; Jersey Finance Limited; and Jersey Bankers’ Association. No issues with the proposed Amendments have subsequently been raised.

The Panel is content that the industry has been sufficiently consulted with and that the opportunity for industry to enhance or object to the proposed Amendments has been duly provided.

### **Conclusion**

The Panel is satisfied that the proposed Amendments are supported by the industry and will provide proportionately enhanced regulation in Jersey’s Investment Business regime.

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<sup>3</sup> <https://www.jerseyfsc.org/industry/consultations/feedback-and-further-consultation-on-investment-business-regime/>