

STATES OF JERSEY



DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (JERSEY) REGULATIONS 200

Lodged au Greffe on 5th June 2007
by the Minister for Economic Development

STATES GREFFE



Jersey

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REPORT

These draft Regulations implement – in Jersey – Financial Action Task Force (“**FATF**”) Recommendation 23 and Special Recommendation VI. Those Recommendations provide a framework of measures for combating money laundering and the financing of terrorism through money service businesses (that is, those persons in the business of a bureau de change, the business of transmitting or receiving funds by wire or other electronic means, or the business of providing cheque cashing facilities).

The FATF states that governments should ensure that businesses “providing a service of money or value transfer, or of money or currency changing” (i.e., money service business) should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

These Regulations will extend the scope of the Financial Services (Jersey) Law 1998 (the “**Financial Services Law**”) – which is administered by the Jersey Financial Services Commission (the “**Commission**”) – to persons carrying on money service business.

Background

Whilst persons carrying on money service business are already required by the Money Laundering (Jersey) Order 1999 (“**Money Laundering Order**”) to have systems and training to forestall and prevent money laundering, there is no body responsible for ensuring that such persons implement the requirements of the Money Laundering Order effectively. The absence of such an oversight regime puts the Island at variance with the international standards issued by the FATF. This deficiency was noted by the International Monetary Fund in its 2003 assessment on the supervision and regulation of the financial sector in Jersey.

The aim of these Regulations and the associated Financial Services (Money Service Business) (Exemptions) (Jersey) Order 200- (the “**Exemptions Order**”) (see below) are to provide a mechanism for the oversight of persons carrying on money service business that will meet the international standards set by the FATF but in a way that will avoid undue bureaucracy and placing unrealistic demands on the Commission’s resources.

The Island’s compliance with the FATF’s recommendations on (amongst other things) the oversight of money service businesses will be re-assessed by the International Monetary Fund in early 2008. It is likely that Jersey’s status as an offshore finance centre will focus the spotlight on its ability to measure up to anti-money laundering/countering the financing of terrorism (“**AML/CFT**”) standards. Failure to apply international standards could, as a worst case scenario, result in Jersey failing to be considered as an equivalent jurisdiction for AML/CFT purposes, e.g. by the European Union, which would have adverse consequences for the Island’s economy.

The effect of the Regulations

As mentioned above, these Regulations have the effect of extending the scope of the Financial Services Law to persons carrying on money service business. However, these Regulations work in conjunction with the Exemptions Order, the latter being designed to exempt certain categories of person from having to seek the Commission’s prior approval to carry on money service business. The paragraphs below summarise the combined effect of the Regulations and the Exemptions Order.

For persons with an annual money service business turnover^[1] of £300,000 or more^[2], it will become an offence to carry on money service business without seeking the prior authorisation of the Commission. Such persons will

be subject to the Financial Services Law in its entirety and will be expected to adhere to Codes of Practice to be issued by the Commission (if these Regulations are approved by the States) for the purpose of establishing sound principles for the conduct of money service business.

A person with money service business turnover below £300,000 will not require prior authorisation from the Commission to conduct money service business. Nor will it be required to adhere to Codes of Practice. It will, however, be required to notify the Commission that it is undertaking money service business and be subject to all aspects of the Financial Services Law other than the parts connected with registration.

The combined effect of these Regulations and the Exemptions Order on most persons carrying on, or proposing to carry on, money service business is expected to be minimal. This is because the £300,000 turnover limit should result in only the largest providers of money service business in Jersey having to seek the authorisation of the Commission to carry on money service business. Consequently, in the majority of cases, a person will be able to lawfully carry on money service business after simply notifying the Commission of its intention to do so, although it will be required to keep records sufficient to determine that its turnover is below the limit set.

Persons carrying on money service business at the time these Regulations come into effect – and whose annual turnover is £300,000 or more – will have a 6 month period in which to make an application to the Commission to continue carrying on such business. The Regulations contain transitional provisions so that such persons may lawfully continue such business pending consideration of their application by the Commission.

In summary therefore, the combined effect of these Regulations and the Exemptions Order will be the disclosure to the Commission of the identity of all persons who carry on money service business. For persons with money service business turnover of £300,000 or more the prior authorisation of the Commission will be required to carry on money service business. All persons carrying on money service business will become subject to oversight (to varying degrees) as required by FATF recommendations. In the case of persons with turnover of £300,000 or more, this oversight will involve a pre-authorisation “fit and proper” assessment and proactive ongoing supervision at a level proportionate to the money laundering/financing of terrorism risk posed by the particular business. In the case of other persons that carry on money service business, oversight will involve the notification to the Commission of the carrying on of money service business and the use, by the Commission, of its reactive supervisory powers if needed.

Draft versions of these Regulations and the Exemptions Order, and the proposed fee levels, were consulted upon publicly by the Commission. The legislation laid before the States takes account of respondents’ comments.

The oversight regime provided for by these Regulations will be funded by fees levied by the Commission on persons who will be required to register under the Financial Services Law to carry on money service business (see the Financial Services (Money Service Business) (Registration and Fees) (Jersey) Order 200-). Note that persons that can benefit from the turnover exemption and who are simply required to notify the Commission that they intend to carry on money service business will not be charged any fee.

Financial/manpower implications

These draft Regulations have no implications for the financial or manpower resources of the States.

Explanatory Note

These Regulations have the effect of extending the Financial Services (Jersey) Law 1998 to money service business. Money service business includes any of the following: a bureau de change; a cheque cashing service; transmission or receipt of funds by wire or other electronic means; or engagement in money transmission services.

Regulation 1 provides a definition of the Financial Services (Jersey) Law 1998 (the “1998 Law”) for the purposes of the Regulations.

Regulation 2 amends Article 1(1) of the 1998 Law by adding a definition of money service business. Money service business is more thoroughly described in *Regulation 3*.

Regulation 2 also amends the definition of “relevant supervisory authority”, the effect of which is to apply the term to any supervisory authority in a country or territory outside Jersey that discharges a function that is similar to a function of the Jersey Financial Services Commission. The purpose of the change is to ensure that the Commission’s ability to co-operate is based on the similarity of its functions with those of another supervisory authority outside Jersey.

Regulation 3 amends Article 2 of the 1998 Law by including money service business in the description of financial service business. It also provides a description of the activities that are included in money service business.

Regulation 4 specifies the transitional provisions that will apply.

Article 7 of the 1998 Law prohibits a person from carrying on money service business unless he or she is registered to do so. *Regulation 4* provides for a 6 month period in which a person who is carrying on money service business immediately before these Regulations come into force can apply to be registered under the Law. That Regulation also applies, in suitably modified form, the 1998 Law to these unregistered persons for that period. The Regulation also permits the extension by the Commission of that period for a period of not more than a further 6 months, if it is satisfied that there are exceptional circumstances that justify the extension.

Regulation 5 provides for the name of the Regulations and that they will come into force 7 days after they are made.



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Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 2 amended</u>
<u>4</u>	<u>Schedule 5 amended</u>
<u>5</u>	<u>Citation and commencement</u>



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 4 of the Financial Services (Jersey) Law 1998^[1], have made the following Regulations –

1 Interpretation

In these Regulations, “principal Law” means the Financial Services (Jersey) Law 1998^[2].

2 Article 1 amended

In Article 1(1) of the principal Law–

(a) after the definition “Minister”, there shall be inserted the following definition –

“ ‘money service business’ has, subject to any Order under Article 4, the meaning given to that expression by Article 2(9);”;

(b) in the definition “relevant supervisory authority”, for the words “supervisory functions corresponding to those of the Commission” there shall be substituted the words “any function that is similar to a function of the Commission”.

3 Article 2 amended

(1) In Article 2(1) of the principal Law, for the words “or general insurance mediation business” there shall be substituted the words “, general insurance mediation business or money service business”.

(2) In Article 2 of the principal Law, at the end, there shall be added the following paragraph–

“(9) A person carries on money service business if the person carries on the business of any of the following –

- (a) a bureau de change;
- (b) providing cheque cashing services;
- (c) transmitting or receiving funds by wire or other electronic means;
- (d) engaging in money transmission services.”.

4 Schedule 5 amended

In Schedule 5 to the principal Law, at the end, there shall be added the following paragraph–

“2. Money service business

- (1) Despite anything in this Law, a person who carried on money service business at any time during the 6 months immediately before the commencement day shall not be taken to have committed an offence under Article 7(4) by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –
 - (a) on and from the commencement day until the day 6 months after the commencement day, or, if a day is prescribed under sub-paragraph (4) in relation to the person, until that day; or
 - (b) if the person applies, before 6 months after the commencement day, for registration under this Law as a person entitled to carry on money service business, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.
- (2) In relation to the period for which, in accordance with sub-paragraph (1), a person is to be taken not to have committed an offence under Article 7(4), the provisions of this Law shall apply (with the necessary modifications) to and in relation to the person as they apply to and in relation to a person registered under the Law to carry on money service business.
- (3) Without prejudice to the generality of sub-paragraph (2), the following modifications to the provisions of this Law shall apply to and in relation to a person to whom sub-paragraph (1) for the time being applies and who has applied for registration under this Law as a person entitled to carry on money service business –
 - (a) a reference in this Law to the period during which a person is registered shall be taken to be a reference to the period between –
 - (i) the date of the application, and
 - (ii) the date on which the application is granted or refused by the Commission, is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn;
 - (b) a reference in this Law to the terms of a registration shall be taken to be a reference to the terms of the application; and
 - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking registration shall be taken as a reference to the Commission refusing an application under Article 9.
- (4) The Commission may, on the application of a person, by notice in writing to the person, prescribe in relation to the person a day for the purposes of sub-paragraph (1)(a).
- (5) The Commission may only prescribe a day under sub-paragraph (4) if–
 - (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person shall not be taken to have committed an offence under Article 7(4) by reason only of carrying on money service business; and
 - (b) the day is not more than 12 months after the commencement day.
- (6) In this paragraph, ‘commencement day’ means the day on which the Financial Services (Amendment of Law) (Jersey) Regulations 2000 came into force.”.

5 Citation and commencement

- (1) These Regulations may be cited as the Financial Services (Amendment of Law) (Jersey) Regulations 2000.

(2) These Regulations shall come into force 7 days after they are made.

[1] *'Money service business turnover' is defined in Article 2 of the Exemptions Order.*

[2] *Save for deposit-takers regulated under the Banking Business (Jersey) Law 1991 which will get an exemption under the Exemptions Order, subject to notifying the Commission that they intend to carry on money service business.*

[1] *chapter 13.225*

[2] *chapter 13.225*