

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME (AMENDMENT OF SCHEDULE 2) (JERSEY) REGULATIONS 200 (P.119/2008): AMENDMENT

**Lodged au Greffe on 26th August 2008
by the Minister for Treasury and Resources**

STATES GREFFE

1 PAGE 7, REGULATION 1 –

In paragraph (b), in the inserted paragraph 3, delete sub-paragraph (1)(d).

2 PAGE 8, REGULATION 1 –

For paragraph (c), substitute the following paragraph –

“(c) in paragraph 4 –

(i) for sub-paragraph (a)(i) there shall be substituted the following clause–

‘(i) paragraphs 1, 3B, 3C, 4, 10, 14, 15, 18A and 21,’;

(ii) after sub-paragraph (a)(iv) there shall be inserted the following clause–

‘(v) paragraph 18, where the relevant special purpose vehicle is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business;’;

(iii) after sub-paragraph (c) there shall be inserted the following sub-paragraphs –

‘(ca) excluding special purpose investment business carried on in accordance with the exemption set out in the Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001 by a person who –

(i) is acting as a functionary within the meaning of that Order, and

(ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of that Law) by a person who is registered under that Law to carry on fund services business;

(cb) excluding restricted investment business carried on in accordance with the exemption set out in the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001 by a person who –

(i) is acting as a functionary within the meaning of that Order, and

(ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of that Law) by a person who is registered under that Law to carry on fund services business;’;

(iv) for sub-paragraph (f) there shall be substituted the following sub-paragraph –

‘(f) excluding trust company business carried on by a person specified in any of the paragraphs of the Schedule to the Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001 specified below where that business is carried on in the circumstances described in that paragraph –

(i) paragraph 1 (private protector company),

(ii) paragraph 2 (general partner),

(iii) paragraph 4 (investment company subsidiary);’;

(v) after sub-paragraph (g) there shall be inserted the following sub-paragraphs –

- ‘ ;
- (h) excluding trust company business carried on in accordance with the exemption set out in the Financial Services (Trust Company Business (Exemptions No. 5) (Jersey) Order 2001 by a person who –
 - (i) is specified in the Schedule to that Order, and
 - (ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business;
 - (i) excluding money service business specified in Article 3 of the Financial Services (Money Service Business) (Exemptions) (Jersey) Order 2007.’.”.

3 PAGE 9, REGULATION 2 –

After paragraph (d), insert the following paragraphs –

- “(e) in paragraph 7, for the words ‘The business of providing any of the following services to third parties not otherwise included in this Schedule –’ there shall be substituted the words ‘(1) The business of providing any of the following services to third parties, where the business is not otherwise included in this Schedule –’;
- (f) at the end of paragraph 7 there shall be added the following subparagraphs –
 - ‘(2) A reference in this paragraph to providing services to third parties shall not include a company’s providing a service to a connected company.
 - (3) For the purposes of this paragraph, a company is connected with another company if –
 - (a) the companies are in the same group;
 - (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights (other than as nominee shareholder) which are attributable to the share capital and are exercisable in all circumstances at any general meeting of the other company or of its holding company; or
 - (c) the first-mentioned company holds, or a company in the same group as the first-mentioned company holds, an interest in the equity share capital of the other company carrying rights to vote in all circumstances at general meetings for the purpose of securing a contribution to the activities of the first-mentioned company or the company in the same group as that company respectively by the exercise of control or influence arising from that interest.
 - (4) In this paragraph, ‘group’ and ‘holding company’ have the same meanings as in the Financial Services (Jersey) Law 1998.’.”.

REPORT

These amendments arise as a result of submissions made by Jersey Finance Limited and the Jersey Funds Association (together “**Industry**”) subsequent to the lodging of P.119/2008 and are intended to further clarify the application of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 to collective investment funds.

The amendments –

- Provide further time for the Jersey Financial Services Commission (“**JFSC**”) and Industry to define a product that has the characteristics of a “COBO-only” fund.
- In line with previous precedents in Schedule 2, exclude from its scope certain additional activities that may be considered to present a lower risk of money laundering. In each case, the person carrying on the activity must be administered by a person who is prudentially supervised by the JFSC and subject to anti-money laundering obligations under the Money Laundering (Jersey) Order 2008.
- Clarify that where Schedule 2 refers to the provision of certain services to “third parties”, that term should not be regarded as covering the provision of a service to a connected (e.g. group) company.

These amendments are an essential part of the changes to the Island’s legislative framework in time for the International Monetary Fund assessment in October 2008.

Financial and manpower implications

There are no financial or manpower implications for the States arising from these amendments.