



Jersey

FINANCIAL SERVICES (AMENDMENT OF SCHEDULES TO LAW) (No. 2) (JERSEY) ORDER 202-

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

THE MINISTER FOR EXTERNAL RELATIONS makes this Order under Article 4(1)(b) and 4(5) of the Financial Services (Jersey) Law 1998 –

1 Schedule 1 (investments) amended

- (1) Schedule 1 to the Financial Services (Jersey) Law 1998 is amended in accordance with this Article.
- (2) For Note (2) to paragraph 7 there is substituted –
 - “(2) A contract not falling within Note 1 shall be regarded as made for commercial purposes if –
 - (a) under the terms of the contract delivery is to be made within 7 days unless it can be shown that there existed an understanding that (notwithstanding the terms of the contract) delivery would not be made within 7 days;
 - (b) it is a commodities future and the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates; or
 - (c) it is a foreign exchange future, and –
 - (i) the parties intend that the profit is to be obtained or the loss avoided by taking delivery of the currencies, and
 - (ii) the purpose of the trade is to facilitate a means of payment for identifiable goods and services.”.
- (3) In paragraph 8 –
 - (a) in the heading “, etc” is deleted;
 - (b) “or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract” is deleted;
 - (c) Note (1) is deleted; and
 - (d) Note (2) is renumbered as Note (1).

- (4) After paragraph 8 there is inserted –

"8A Financial derivatives

Rights under any contract, except an option, future or contract for differences, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

Notes:

- (1) This paragraph includes any contract made or traded on an investment exchange, or made otherwise but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (2) This paragraph does not apply to a contract not falling within Note 1 where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.
- (3) This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 of the United Kingdom under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 of the United Kingdom.”.

2 Schedule 2 (exemptions) amended

In Schedule 2 to the Financial Services (Jersey) Law 1998 paragraph 18 (Defined benefit schemes) is renumbered as paragraph 17A.

3 Schedule 5 (transitional provisions) amended

In Schedule 5 to the Financial Services (Jersey) Law 1998, after paragraph 3, there is inserted –

"4 Certain types of investment business

- (1) Despite anything in this Law, a person who carried on investment business in relation to the matters in sub-paragraph (2) at any time during the 6 months immediately before the commencement day is not to 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 specified 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 investment 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) The matters are –
 - (a) operating an investment exchange; or
 - (b) making arrangements with a view to another person acquiring, disposing of, subscribing for or underwriting investments.
 - (3) In relation to the period for which, in accordance with sub-paragraph (1), a person is taken not to have committed an offence under Article 7(4), the provisions of this Law 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 investment business.
 - (4) Without prejudice to the generality of sub-paragraph (3), the following modifications to the provisions of this Law shall apply to and in relation to a person to whom sub-paragraph (1) applies and who has applied for registration under this Law as a person entitled to carry on investment business –
 - (a) a reference in this Law to the period during which a person is registered is 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 is 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 a registration is taken to be a reference to the Commission refusing an application under Article 9.
 - (5) On the application of a person, the Commission may, by notice in writing, specify a day in relation to the person for the purposes of sub-paragraph (1)(a).
 - (6) The Commission must not specify a day under sub-paragraph (5) unless –
 - (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person will not be taken to have committed an offence under Article 7(4) by reason only of carrying on investment business; and
 - (b) the day is not later than 12 months after the commencement day.
 - (7) In this paragraph, “commencement day” means –

- (a) for making arrangements with a view to another person acquiring, disposing of, subscribing for or underwriting investments, the day on which Regulation 1 of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 201- comes into force;
- (b) for operating an investment exchange, the day on which Regulation 2 of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 201- comes into force.

4 Schedule 6 (securities) amended

In Schedule 6 to the Financial Services (Jersey) Law 1998 –

- (a) in paragraph (7), the following is deleted –
 - (i) in sub-paragraph (1) “but whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in”,
 - (ii) clauses (a), (b) and (c),
 - (iii) sub-paragraph (2);
- (b) after paragraph 7, there is inserted –

“8 Financial derivatives

Rights under any contract, except an option, future or contract for differences, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.”

5 Citation and commencement

This Order may be cited as the Financial Services (Amendment of Schedules to Law) (No. 2) (Jersey) Order 202- and comes into force on the day or days prescribed by the Minister.