

STATES OF JERSEY



DRAFT ALTERNATIVE INVESTMENT FUNDS (AMENDMENT) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 19th November 2018
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

In 2014, the [Financial Regulation \(Miscellaneous Provisions No. 2\) \(Jersey\) Law 2014](#) (the “2014 Law”) amended certain powers granted under the [Collective Investment Funds \(Jersey\) Law 1988](#) (the “CIFJL”) to the Jersey Financial Services Commission (“JFSC”) and the Royal Court. Although the [Alternative Investment Funds \(Jersey\) Regulations 2012](#) (the “AIF Regulations”) are, to a large extent, modelled on the CIFJL, because of a timing issue, the amendments made to the CIFJL by the 2014 Law were not also made to the AIF Regulations.

As a consequence, the AIF Regulations and the CIFJL are no longer consistent.

The Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014 made 3 substantive changes to the CIFJL –

- it made the information-gathering powers of the JFSC consistent with other regulatory Laws and widened them in certain respects (for example, any employee or former employee of a regulated business was brought into scope);
- it enhanced the powers of the Royal Court to make restitution orders, specifically where the provider of the false and misleading information is not the party that transacted with the ‘wronged’ investor;
- it enhanced the co-operation powers of the JFSC, so that the JFSC may now issue a direction to a regulated business in order to assist an overseas regulatory authority.

Regulations 2 to 11, 14 and 15 of the Draft Alternative Investment Funds (Amendment) (Jersey) Regulations 201- (the “draft Regulations”) would make the same changes to the AIF Regulations so that they are once again consistent with the CIFJL.

Regulations 12 and 13 make certain changes to the provisions that permit the JFSC to disclose “restricted” (i.e. confidential) information to professional bodies (such as those that regulate the accountancy and legal professions), Lloyd’s of London (the insurance market), and pension supervisors. The changes mirror those that are proposed to be made to equivalent provisions in the other financial services regulatory Laws by the Draft Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 201- (*see* P.139/2018, lodged on the same date as these draft Regulations).

Regulation 16 updates the wording of the limitation of liability provision to the norm now used (i.e. it confirms that the limitation of liability would not apply so as to prevent an award of damages made in respect of an act on the ground that it was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#)). That Article provides

that it is unlawful for a public authority to act in a way which is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms.

Financial and manpower implications

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

Explanatory Note

These Regulations amend the Alternative Investment Funds (Jersey) Regulations 2012 (the “principal Regulations” as defined in *Regulation 1*). They principally amend provisions to make them uniform with those used in the Collective Investment Funds (Jersey) Law 1988.

Regulation 1 defines “principal Regulations”, a term used throughout these Regulations, as the Alternative Investment Funds (Jersey) Regulations 2012.

Regulation 2 amends Regulation 2 of the principal Regulations so as to replace the definition “books and papers” with a new definition “documents” and to introduce a definition “pension supervisor”, as meaning any entity responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements.

Regulation 3 amends Regulation 4 of the principal Regulations to include with the definition “principal person” a liquidator of a person’s affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person.

Regulation 4 amends Regulation 12(3) of the principal Regulations to ensure that the Court takes into account the interest of the public when making a decision as to the time that an act of the Jersey Financial Services Commission (“Commission”) may take effect.

Regulation 5 substitutes Regulation 14 of the principal Regulations, which enables the Commission and certain persons to demand information or documents for the purpose of enforcement of the principal Regulations.

Regulation 6 inserts a new provision into Regulation 18 of the principal Regulations to enable the Commission to require verification of information provided about key persons or principal persons (as defined in the principal Regulations).

Regulation 7 amends Regulation 23(3) of the principal Regulations consequential on the introduction of the definition “documents”.

Regulation 8 amends Regulation 31(8) of the principal Regulations consequential on the introduction of the definition “documents”.

Regulation 9 amends Regulation 32 of the principal Regulations consequential on the introduction of the definition “documents”.

Regulation 10 amends Regulation 33 of the principal Regulations (which enables warrants to be granted for search and entry) so as to change cross references and certain expressions as a consequences of the substitution of Regulation 14 and of the introduction of the definition “documents”.

Regulation 11 amends Regulation 34 of the principal Regulations to enable the Commission to exercise its powers to give directions in order to assist other regulators of financial services.

Regulation 12 amends Regulation 38 of the principal Regulations to permit disclosure of restricted information to a pension supervisor (in Jersey or elsewhere) and to the Society of Lloyd’s.

Regulation 13 amends Regulation 39 of the principal Regulations to provide that information must not be disclosed to a pension supervisor or to the Society of Lloyd’s unless the Commission is satisfied that any conditions it sets in respect of the disclosure are or will be complied with.

Regulation 14 amends Regulation 41(7) of the principal Regulations to change a cross reference, consequential to the new Regulation 14.

Regulation 15 amends Regulation 43 of the principal Regulations to provide the circumstances when the Court may make an order making a certificate holder's business subject to such supervision, restraint or conditions as the Court may specify; make such ancillary orders as the Court thinks desirable; and order such steps to put a person back to the position in which they were before a transaction was entered into.

Regulation 16 amends Regulation 46 to insert a provision to make it clear that despite the States, the Chief Minister and the Commission, any Commissioner and any person acting as an officer, servant or agent of the Commission not being liable for anything done or omitted in the discharge of any function under the Regulations unless it is shown that the act or omission was in bad faith, such limitation of liability does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

Regulation 17 gives the title of these Regulations and provides for them to come into force 7 days after they are made.



Jersey

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Arrangement

Regulation

1	Interpretation	9
2	Regulation 2 amended	9
3	Regulation 4 amended	9
4	Regulation 12 amended	10
5	Regulation 14 substituted	10
6	Regulation 18 amended	13
7	Regulation 23 amended	13
8	Regulation 31 amended	14
9	Regulation 32 amended	14
10	Regulation 33 amended	14
11	Regulation 34 amended	15
12	Regulation 38 amended	15
13	Regulation 39 amended	15
14	Regulation 41 amended	15
15	Regulation 43 amended	15
16	Regulation 46 amended	16
17	Citation and commencement	17



Jersey

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

THE STATES, in pursuance of Article 2 of the European Union Legislation Implementation (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Regulations” means the Alternative Investment Funds (Jersey) Regulations 2012².

2 Regulation 2 amended

In Regulation 2 of the principal Regulations –

- (a) the definition “books and papers” and “books or papers” shall be deleted;
- (b) after the definition “Directive 2011/61/EU” there shall be inserted the following definition –

“ ‘documents’ includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;”;

- (c) after the definition “partnership” there shall be inserted the following definition –

“ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”.

3 Regulation 4 amended

In Regulation 4 of the principal Regulations, for paragraph (e) there shall be substituted the following paragraph –

- “(e) subject to paragraph (f), a liquidator of a person’s affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person;”.

4 Regulation 12 amended

For Regulation 12(3) of the principal Regulations there shall be substituted the following paragraph –

- “(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of existing or potential participants in an AIF to which a certificate relates, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.”.

5 Regulation 14 substituted

For Regulation 14 of the principal Regulations there shall be substituted the following Regulation –

“14 General power to require information and documents

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
- (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission’s functions under these Regulations;
 - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or agent reasonably requires the person to answer for the purposes of the performance of the Commission’s functions under these Regulations.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Regulation 7 or 15, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
- (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
 - (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead

require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.

- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.
- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2), as the case may be.
- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
 - (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
 - (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Regulation, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Regulation to require documents to be provided includes power –
 - (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
 - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Regulation are retained under paragraph (8)(a) the documents may be so retained –
 - (a) for a period of one year; or

- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings,
whichever is the later.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Regulation or obstructs an officer, or agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Regulation shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (13) A statement made by a person in compliance with a requirement imposed under this Regulation shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or proceedings under any provision of Regulation 23 other than paragraph (6) of Regulation 23.
- (14) In this Regulation –
- ‘agent’ means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;
- ‘defined person’ means any of the following persons –
- (a) a fund person;
 - (b) a person who was a fund person at any time;
 - (c) a person who is a principal person, or key person, in relation to another person who is a fund person or was a fund person at any time;
 - (d) a person who was at any time a principal person, or key person, in relation to another person who is a fund person or was a fund person at, before or after that time;
 - (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
 - (f) a person who is an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at any time;

- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is a fund person;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a fund person at that time;

‘fund person’ means a service provider or an AIF entity;

‘officer’ means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

(15) For the purposes of paragraph (6), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
- (b) a person who the Commission has reasonable grounds to suspect has contravened Regulation 7.

(16) In sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (14), the reference to a person who was a fund person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Regulation.

(17) For the purposes of this Regulation –

- (a) a time that is specified may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
- (b) a document or information may be, but is not required to be, specified in terms of one or more classes or descriptions.”.

6 Regulation 18 amended

After Regulation 18(8) of the principal Regulations there shall be inserted the following paragraph –

“(8A) Notice under paragraph (8) may include a requirement that the person concerned or the certificate holder (as the case may be) provides verification, in accordance with the notice, of any information or documents referred to in that paragraph.”.

7 Regulation 23 amended

In Regulation 23(3) of the principal Regulations, for the words “books or papers” in both places where they occur there shall be substituted the word “documents”.

8 Regulation 31 amended

In Regulation 31(8)(a) of the principal Regulations the words “book or” shall be deleted.

9 Regulation 32 amended

In Regulation 32 of the principal Regulations –

- (a) in paragraph (1) –
 - (i) in sub-paragraph (a), for the words “information, books or papers are or are likely to be” there shall be substituted the words “any information or document is, or is likely to be,”
 - (ii) in paragraph (1) for the words “of information, books or papers” there shall be substituted the words “of any information, or document,”;
- (b) in paragraph (2) for the words “information, books or papers” in both places where they occur there shall be substituted the words “information or documents”.

10 Regulation 33 amended

In Regulation 33 of the principal Regulations –

- (a) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) If the Bailiff is satisfied by information on oath that there is reasonable cause to suspect that –
 - (a) if a notice were given under Regulation 14 it would not be complied with;
 - (b) if any person were required to produce documents under Regulation 14, those documents would be likely to be removed, tampered with or destroyed;
 - (c) a specified person has failed in any respect to comply with a notice or requirement referred to in sub-paragraph (a) or (b);
 - (d) a specified person has not provided complete information or documents in response to a notice or requirement referred to in sub-paragraph (a) or (b);
 - (e) an officer, or agent, within the meaning of Regulation 14 has been or may be obstructed in exercising a power under Regulation 14(4); or
 - (f) an inspector appointed under Regulation 31 has been or may be obstructed in exercising a power under Regulation 31(6),the Bailiff may grant a warrant under this paragraph.”;
- (b) in paragraphs (2)(b), (c) and (e), (4), (5) and (7) for the words “books or papers” wherever occurring there shall be substituted the word “documents”;
- (c) in paragraph (8) for the words “information, books or papers” there shall be substituted the words “information or documents”.

11 Regulation 34 amended

In Regulation 34 of the principal Regulations –

- (a) after paragraph (1)(c) there shall be inserted the following sub-paragraph –
 - “(ca) the power to give a direction under Regulation 20;”;
- (b) for paragraph (6)(a)(i) there shall be substituted the following clause –
 - “(i) in Regulation 14 to a contravention of Regulation 7 or of Regulation 15, or”.

12 Regulation 38 amended

In Regulation 38 of the principal Regulations –

- (a) in paragraph (6), for the words after clause (iii) there shall be substituted the following words –
 - “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;
- (b) after paragraph (7) there shall be inserted the following paragraphs –
 - “(7A) Regulation 35 does not preclude the disclosure of information by the Commission for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.
 - (7B) Regulation 35 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”.

13 Regulation 39 amended

In Regulation 39 of the principal Regulations, for the words “38(5), (6) or (7)” there shall be substituted the words “38(5), (6), (7), (7A) or (7B)”.

14 Regulation 41 amended

In Regulation 41(7) of the principal Regulations, in the definition “approved professional” for the word “14(2)” there shall be substituted the word “14(6)”.

15 Regulation 43 amended

In Regulation 43 of the principal Regulations, for paragraphs (7) and (8) there shall be substituted the following paragraphs –

- “(7) Where, on the application of the Commission, the Court is satisfied that –
 - (a) a certificate holder (referred to in this Regulation as ‘holder’) –

- (i) is not, in terms of Regulation 9(7)(a), a fit and proper person to carry on business in relation to an AIF, being business that the holder is purporting to carry on,
 - (ii) is not fit to carry on business in relation to an AIF to the extent to which the holder is purporting to do, or
 - (iii) has, in relation to an AIF, failed, or is likely to fail, to comply with a provision or direction as described in paragraph (4)(a); and
- (b) it is desirable for the Court to act under this paragraph for the protection of participants or potential participants in that or any other AIF in relation to which the holder carries on or purports to carry on business,

the Court may, as it thinks just, make an order making the holder's business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

- (8) If, on an application made under paragraph (7), the Court is satisfied that a holder has –
- (a) by entering into any transaction with another person, contravened Regulation 7;
 - (b) contravened Regulation 15 with the result that another person has been induced to enter into a transaction with the holder or with a third person;
 - (c) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Regulation 15 by a third person; or
 - (d) by entering into any transaction with another person, contravened any condition applicable to the holder (whether attached to a certificate or prescribed by Order) or any direction given to the holder under Regulation 20,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.”.

16 Regulation 46 amended

After Regulation 46(1) there shall be inserted the following paragraph –

- “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000³.”.

17 Citation and commencement

These Regulations may be cited as the Alternative Investment Funds (Amendment) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 17.245*
² *chapter 17.245.51*
³ *chapter 15.350*