

FEEDBACK ON CONSULTATION PAPER NO. 1 2009

COMPANIES (AMENDMENT NO. 4) (JERSEY) REGULATIONS 200-

Amendments to the Companies (Jersey) Law 1991 to provide for an oversight regime for auditors of share traded companies and for the preparation of accounts for share traded companies in accordance with prescribed accounting standards

CONSULTATION FEEDBACK

This paper reports on the responses received by the Jersey Financial Services Commission (the “**Commission**”) on Consultation paper No. 1 2009: Companies (Amendment No. 4) (Jersey) Regulations 200-.

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Glossary of terms

auditor	means a natural person or a firm practising as an auditor and in whose name audit reports are issued. (Compare with the definition of 'responsible individual'.) A 'firm' may be a partnership (including a limited liability partnership) or a body corporate
IOSCO	means the International Organisation of Securities Commissions
recognized professional body	means each of: the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants of Scotland, the Association of Chartered Certified Accountants; and the Institute of Chartered Accountants in Ireland
responsible individual	means a natural person who is responsible for audit work in a firm of auditors and who has been authorised by the firm to sign audit reports for the firm
the ACCA	means the Association of Chartered Certified Accountants
the Commission	means the Jersey Financial Services Commission
the Consultation Paper	means the Commission's Consultation Paper No. 1 2009: Companies (Amendment No. 4) (Jersey) Regulations 200-
the EC	means the European Commission
the ICAEW	means the Institute of Chartered Accountants in England and Wales
the ICAI	means the Institute of Chartered Accountants in Ireland
the ICAS	means the Institute of Chartered Accountants of Scotland
the Jersey LLP Law	means the Limited Liability Partnerships (Jersey) Law 1997
the JSCCA	means the Jersey Society of Chartered and Certified Accountants
the Minister	means the Minister for Economic Development
the Regulations	means the draft Companies (Amendment No. 4) (Jersey) Regulations 200-
the Statutory Audit Directive	means European Union Directive 2006/43/EC
UK	means United Kingdom

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1 OVERVIEW

1.1 Background

- 1.1.1 In January 2009, the Commission published Consultation Paper No. 1 2009: Companies (Amendment No. 4) (Jersey) Regulations 200- (the “**Consultation Paper**”).
- 1.1.2 The purpose of the consultation paper was to consult on draft legislation that would amend the Companies (Jersey) Law 1991 (the “**Companies Law**”) to: (i) respond to the impact on Jersey-based auditors of European Union Directive 2006/43/EC (the “**Statutory Audit Directive**”)¹; and (ii) improve the Island’s level of compliance with IOSCO² Principle 16 relating to accounting and auditing standards.
- 1.1.3 The draft legislation is entitled the ‘Companies (Amendment No. 4) (Jersey) Regulations 200-’ (“**the Regulations**”) and provides, inter alia, for a regime to be established for the oversight of auditors of share traded companies (broadly, but with some limited exceptions, companies that have securities admitted to trade on a European Union regulated market (stock exchange)).
- 1.1.4 Where a reference in this paper is made to an “**auditor**” it should be taken as a reference to a natural person or firm practising as an auditor and in whose name audit reports are issued.
- 1.1.5 A natural person who is responsible for audit work in a firm of auditors and who has been authorised by the firm to sign audit reports of share traded companies for the firm is referred to herein as a “**responsible individual**”.

1.2 Feedback on the proposals contained in the Consultation Paper

- 1.2.1 The Commission received comments from two representative bodies, the Jersey Society of Chartered and Certified Accountants (the “**JSCCA**”) and Jersey Finance Limited (although the latter’s response represented the content of the single submission it had received from a member firm).
- 1.2.2 Responses were also received from a fund administration firm and a firm of auditors (see Appendix A).
- 1.2.3 The Commission is grateful to respondents for taking the time to consider and comment on the Regulations.
- 1.2.4 The Commission has also met with representatives of each of the ‘Big 4’ accounting firms to discuss the responses received to the proposals in the consultation paper.

¹ See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_157/l_15720060609en00870107.pdf

² The International Organisation of Securities Commissions (“**IOSCO**”) is the international standard setter for securities regulation.

2 SUMMARY OF RESPONSES

2.1 Structure of this section

- 2.1.1 The questions posed in the consultation paper and a summary of the responses received to each one is presented below. How the Commission intends to address the matters raised in the responses is set out in italicised text.
- 2.1.2 So that the responses to the questions can be considered in context, the main paragraphs in the consultation paper covered by each question are shown in square brackets after each question.
- 2.1.3 The consultation paper can be obtained from the Commission's website (see www.jerseyfsc.org/pdf/Consultation_Paper_No_1_2009_Company_Law_Amendments.pdf) or by contacting the Commission directly.

2.2 Question 5.2.2.1

What is your view on the proposed auditor oversight regime? If you have any concerns, please explain what they are and give reasons for them. [Paragraph 5.2.]

- 2.2.1 Respondents supported the proposed auditor oversight regime.

2.3 Question 5.4.6.1

Are you content with the proposed implementation timescale for the auditor oversight regime? If not, please give your reasons. [Paragraph 5.4.]

- 2.3.1 Respondents were content with the proposed implementation timescale for the auditor oversight regime.

2.4 Question 6.1.5.1.

Are you content with the Commission's suggestion that, initially at least, the constituency of companies that should be covered by legislation in response to the requirements of IOSCO Principle 16 should be restricted to companies with securities traded on a regulated market in the EU? If you are not, please explain why and indicate what approach you think should be adopted instead. [Paragraph 6.1.]

- 2.4.1 Respondents supported the Commission's suggestion to, at least initially, restrict the constituency of companies that should be covered by legislation in response to the requirements of IOSCO Principle 16 to those companies with securities traded on a regulated market in the EU.
- 2.4.2 One respondent indicated that they would not support the inclusion of all Jersey public companies and Jersey companies which traded on non-EU markets, simply because there would be no connection between those companies and the EU.

2.4.3 *For the reasons set out in paragraphs 6.1.4 and 6.1.5 of the Consultation Paper, the Commission considers that there are practical reasons for initially restricting the constituency of companies that should be covered by legislation in response to the requirements of IOSCO Principle 16 to those companies with securities traded on a regulated market in the EU. However, to provide for increased compliance with IOSCO Principle 16 (which goes beyond just companies with securities traded on EU regulated markets), the Commission will – once the auditor oversight regime has bedded down – consult on expanding the constituency of companies covered.*

2.5 Question 6.2.4.5.

Are you content with the proposed approach to enhancing the Island’s compliance with IOSCO Principle 16? If you are not, please explain why. [Paragraph 6.2.]

2.5.1 Respondents supported the proposed approach to enhancing the Island’s compliance with IOSCO Principle 16.

2.5.2 One respondent suggested a list of accounting principles that could be prescribed for share traded companies to follow when preparing accounts.

2.5.3 *In due course, the Commission will consult on which accounting principles should be prescribed pursuant to proposed Article 105(2)(a).*

2.6 Question 8.4.1.1.

What is your view on Regulations 1 to 4? If you have any concerns, please explain what they are and give your reasons. [Paragraphs 8.1 to 8.4]

2.6.1 Respondents supported Regulations 1 to 4.

2.7 Question 9.2.5.1.

Do you think it appropriate that only a suitable qualified partner in an audit partnership can sign an audit report or should any suitable qualified employee of the partnership be permitted to do so? Please give reasons for your view. [Paragraph 9.2.1 to 9.2.5.]

2.7.1 Respondents considered that any suitably qualified employee (and not just partners) of an audit partnership should be able to sign an audit report on behalf of the partnership.

2.7.2 *The Commission will request the Law Draftsman to amend proposed Article 102(1) to provide for any employee of the partnership who meets the definition of ‘auditor’ in proposed Article 102(1) to be able to sign an audit report on behalf of the partnership.*

2.7.3 One respondent suggested that the reference in the definition of ‘partnership’ (in proposed Article 102) to “entities of a similar character to those registered under the Limited Liability Partnerships (Jersey) Law 1997” (the “**Jersey LLP Law**”) would cause an unintentional problem because United Kingdom (“**UK**”) LLPs are bodies corporate.

2.7.4 *The Commission is of the view that a UK LLP would not be regarded as “an entity of a similar character to one registered under the Limited Liability Partnerships (Jersey)*

Law 1997" because a Jersey LLP is a legal person but not a body corporate (Article 2(4) of the Jersey LLP Law). Nevertheless, the Commission will explore with the Law Draftsman whether an amendment to the proposed definition of partnership to specifically exclude bodies corporate would be helpful to avoid any doubt over the matter.

2.8 Question 9.2.11.1.

Do you consider that the definition of 'share traded company' is appropriate to address the equivalence requirements of the Statutory Audit Directive and the need to enhance Jersey's compliance with IOSCO Principle 16? If you consider that the definition is not appropriate, please explain why. [Paragraphs 9.2.6 to 9.2.11.]

2.8.1 Respondents supported the definition of 'share traded company'.

2.8.2 *The Commission will be instructing the Law Draftsman to exclude a company that is an open-ended collective investment undertaking from the definition of a share traded company. This is because recent discussions with the Professional Oversight Board in the UK have highlighted the fact that the audit of such companies is outside the scope of the Statutory Audit Directive.*

2.8.3 *The putting in place of this exclusion will be consistent with the Commission's policy - in responding to the impact of the Statutory Audit Directive - of doing what is necessary at this time to obtain equivalence.*

2.9 Question 9.5.3.1.

What is your view on the proposal to enable the Minister to prescribe by Order which generally accepted accounting principles a share traded company must follow when preparing its accounts? If you have any concerns, please explain what they are and give reasons for them. [Paragraph 9.5.2.]

2.9.1 Respondents supported the proposal, although one made the point that the prescribed generally accepted accounting principles should not be overly restrictive or more onerous than those applied by the major regulated European Union stock exchanges.

2.9.2 *The Commission will consult, in due course, on which generally accepted accounting principles should be prescribed for share traded companies.*

2.10 Question 9.5.3.2.

Do you think that it is appropriate for holding companies to be granted a concession from preparing separate accounts when consolidated accounts are prepared? If you do not think such a concession is appropriate, please explain why. [Paragraph 9.5.3.]

2.10.1 Respondents supported the proposed concession for holding companies.

2.10.2 *One respondent suggested a minor drafting change to proposed Article 105 to remove any apparent conflict between paragraphs 4 and 11 thereof and this will be passed on to the Law Draftsman.*

2.11 Question 9.6.2.1.

What is your view on the proposal to extend requirements for the application of generally accepted accounting principles to interim accounts? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.6.1 to 9.6.2.]

2.11.1 Respondents supported this proposal.

2.12 Question 9.10.4.1.

Do you think that the Registrar of Companies or the Commission should maintain the Register of Eligible Auditors? Please give reasons for your answer. [Paragraphs 9.10.1 to 9.10.4.]

2.12.1 Respondents felt that the Registrar of Companies should maintain the Register of Eligible Auditors. However, the JSCCA was in favour of the Commission, rather than the Registrar, taking all decisions relating to the registration or de-registration of eligible auditors or the conditioning etc., of a registration.

2.12.2 *Although the Registrar of Companies would meet the Directive's definition of a 'competent authority', recent contact with the European Commission has indicated that having the Registrar of Companies as the registering 'body' may cause problems with the Island's equivalence application. This is primarily because the Registrar may be a qualified auditor (even if no longer practising) and thus not considered independent enough of the audit profession. To overcome this, the Commission intends to instruct the Law Draftsman to amend the Regulations so that the Commission, rather than the Registrar, performs all of the functions relating to eligible auditors.*

2.13 Question 9.10.19.1.

What is your view on the proposed provisions in Article *110 relating to a Register of Eligible Auditors? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.10.5 to 9.10.19.]

2.13.1 One respondent observed that some companies (each an "Affected Company") that would be 'share traded companies' under the proposed legislation would have to change auditor. This is because their current auditor would not qualify as an 'eligible auditor' under the proposals because control of the firm would not rest with a sufficient percentage of persons who are members of a 'recognized professional body' (as defined in proposed Article 102³). Currently such audit firms ("Affected Firms") may audit a particular Jersey company where they have been granted discretionary authorisation by the Commission pursuant to (existing) Articles 113 and 113B of the Companies (Jersey) Law 1991. Under the draft Regulations, this existing discretionary authorisation would be retained but only in respect of the audit of non-share traded companies (see proposed Article 113D(6)).

³ Namely, the Institute of Chartered Accountants in England and Wales ("ICAEW"), the Institute of Chartered Accountants of Scotland ("ICAS"), the Association of Chartered Certified Accountants ("ACCA") and the Institute of Chartered Accountants in Ireland ("ICAI").

- 2.13.2 *In considering how to respond to this concern, the Commission has had regard to how many Affected Companies there are likely to be and how any possible solution might impact on the main objective of the Regulations which is to respond to the impact of the Statutory Audit Directive on local audit firms. Of the 33,000 companies registered in Jersey, the Commission anticipates that less than 100 of them would qualify as share traded companies. And in that figure of 100, only a handful is expected to have as their auditor an Affected Firm. The Commission believes that the main reason why an Affected Firm may be used currently is because the Affected Company's assets are primarily located in the jurisdiction of the Affected Firm.*
- 2.13.3 *The Commission has considered whether Affected Firms could, under the proposed revised Part 16 be authorised on a discretionary basis by the Commission to audit share traded companies, in much the same way that the existing discretion under Articles 113 and 113B works. However, the Commission is of the view that, if a discretion were to be introduced, it would have to be more rigorous than for non-share traded companies in order to address the additional risks presented in such audits.*
- 2.13.4 *To add more rigor to any discretionary approval process, the Commission considers that it would need to be satisfied that those persons that form part of the controlling majority of the Affected Firm, but who are not members of a 'recognized professional body' (as defined in proposed Article 102⁴), are members of an accountancy body (or similar) that requires auditors to meet minimum 'qualification standards' in terms of such matters as fitness and propriety, professional knowledge and competence, practical training and continuing education, that are no less demanding than those which apply to a member of a recognized professional body. In the UK, there is a regime that allows the Secretary of State to recognise 'overseas qualifications' (i.e. those from a body outside the European Economic Area ("EEA")) as equivalent to those of a recognized professional body. (See paragraph 2.13.11 for comment on EEA qualifications.)*
- 2.13.5 *It would be possible to introduce a similar regime into the Companies Law to enable the Commission, or the Minister, to be able to recognise an overseas qualification. However, it is considered that such a regime would be complex to administer in practice, and would require a disproportionate level of the Commission's limited resources to be used to address a situation that it is thought, as described in paragraph 2.13.2 above, will only affect a handful of Jersey companies. There could be an argument for Jersey to simply automatically recognise any overseas qualification that had been recognised in the UK. But the Commission considers that this is undesirable: Jersey's role as an international finance centre means that it is subject to considerable international scrutiny and the emergence of any subsequent problems with the standards of a recognised overseas qualification, which had been approved in the UK, may carry significantly more reputational risk for Jersey than for the UK.*
- 2.13.6 *Even if such a regime were to be introduced to recognise overseas qualifications, the Commission considers that there would need to be a method to ensure that the individual who would sign the audit report had adequate relevant knowledge and experience to carry out an audit of a Jersey share traded company. In the UK, there is a regime in place that requires an individual to gain a minimum of 48 weeks' UK audit experience and then sit an 'aptitude test' to prove adequate knowledge of company and taxation law. Whilst it is conceptually possible to put a similar regime in place in*

⁴ Namely, the Institute of Chartered Accountants in England and Wales ("ICAEW"), the Institute of Chartered Accountants of Scotland ("ICAS"), the Association of Chartered Certified Accountants ("ACCA") and the Institute of Chartered Accountants in Ireland ("ICAI").

Jersey, it is considered that this would be complex to provide for in legislation, complex to administer in practice, and would require a disproportionate level of the Commission's limited resources to be used to address a situation that it is thought, as previously highlighted, will affect only a handful of Jersey companies.

- 2.13.7 *What also has to be borne in mind is that, as well as Jersey share traded companies, Affected Firms may well find themselves precluded from auditing companies from other 'third countries' as a result of the impact of the Statutory Audit Directive.*
- 2.13.8 *In deciding against the introduction of a discretionary authorisation regime for auditors of share traded companies, the Commission has also been mindful of how such a regime may be viewed by the European Commission (the "EC"). Despite provisions for qualification being outside the scope of the third country provisions in the Statutory Audit Directive, we anticipate that the EC may be uncomfortable with the concept of such a discretion which, by its very nature, would mean that auditors from jurisdictions outside of the EEA that the EC may not be familiar with, or which may have not been assessed by the EC as equivalent, could be authorised under the Jersey regime. The primary purpose of the Regulations is to address the impact of the Directive on local audit firms so we would not wish to risk prejudicing that purpose in the course of trying to address a situation that will affect only a very small number of companies and non-local audit firms.*
- 2.13.9 *As a practical solution for Affected Companies, the Commission would recommend that such companies consider appointing an audit firm that meets the criteria to be an eligible auditor (e.g. a Jersey audit firm) and requesting that the appointed audit firm be assisted by the audit staff from the Affected Firm.*
- 2.13.10 *To ensure that Affected Companies would be given sufficient time to appoint an audit firm that would meet the criteria to be an eligible auditor, the Commission proposes to introduce a transitional period into the proposed legislation (with a discretion for the Commission to extend it, on a case-by-case basis, in exceptional circumstances).*
- 2.13.11 *However, there is one change to the qualification criteria that the Commission intends to instruct the Law Draftsman on. The change is to amend the definition of 'auditor' in proposed Article 102 so that individuals that hold a qualification to audit accounts under the law of an EEA member state qualify to be counted as part of the controlling majority in an audit firm. A similar position currently exists in the UK in recognition of the fact that the standards for auditor qualifications in the EEA are now substantively harmonised as a consequence of the Statutory Audit Directive. In particular, the Commission anticipates that this change will facilitate expected moves towards greater pan-European ownership of audit firms. Informal consultation with representatives of the 'Big 4' audit firms indicates that they support this proposed change to Article 102.*
- 2.13.12 *A respondent pointed out that the current wording of proposed Article 110(2)(c) would inadvertently catch responsible individuals that were not involved with audit work for share traded companies.*
- 2.13.13 *The Commission will ensure that the text of the Article is amended to restrict its application to the audit of share traded companies.*
- 2.13.14 *A respondent noted that where an eligible auditor was a branch of a UK firm, the wording of proposed Article 110(3) would result in all partners of the UK firm having to be included on the Register of Eligible Auditors.*

- 2.13.15 *This was an oversight. The text of Article 110(3) will be amended so that the Register will contain information only on those principals resident in Jersey and on those responsible individuals (wherever located) of the audit firms that carry out audit work in relation to share traded companies.*
- 2.13.16 The JSCCA and another respondent expressed the view that the cost of funding the oversight regime should be kept to a minimum and be at a level similar to that in the UK.
- 2.13.17 *The Commission is working closely with the ICAEW to come up with a fee scale that is structured similarly to that applying in the UK. The actual fee levels have not yet been calculated but it is hoped that they will compare favourably to those applying in the UK, although it has to be recognised that some of the economies of scale that apply in the UK regime may not be available due to the small number of share traded company audits that would be overseen. In conjunction with the ICAEW, the Commission plans to consult with the audit profession on the fee structure and fee levels in due course.*
- 2.13.18 One respondent suggested that an eligible auditor should be given a time period in which to rectify a breach of proposed Article 110(6)(a) [an obligation placed on the auditor by an Order of the Minister].
- 2.13.19 *The Commission does not see that there is justification for such a grace period. The Attorney General would take into account the speed with which a breach had been rectified when deciding whether a prosecution would be in the public interest or not. (See the Attorney General's 'Code on the Decision to Prosecute' available at <http://www.gov.je/NR/rdonlyres/7987ABE7-7BB0-4B02-98AD-CED1B01DC1A0/0/CodeonDecisiontoProsecute.pdf>)*

2.14 Question 9.11.5.1.

Do you agree that the majority of auditors that work in Jersey are members of the ICAEW and that most, and possibly all, Jersey audit firms are already subject to practice assurance reviews by the ICAEW? If you think this is not the case, please provide your understanding of the position. [Paragraphs 9.11.1 to 9.11.5.]

- 2.14.1 The feedback from respondents indicates that the majority of auditors working in Jersey are likely to be members of one of the UK or Irish Institutes (rather than a majority being members of the ICAEW).
- 2.14.2 The feedback also indicates that the audit firms that are most likely to carry out audits of share traded companies are already subject to practice assurance reviews by the ICAEW.
- 2.14.3 *This feedback from respondents, and the general support for the auditor oversight regime expressed by respondents, has given the Commission comfort that the decision to engage with the ICAEW for it to provide the practical oversight of auditors is the correct one. Of course, this does not rule out the possibility of engaging with other recognized professional bodies once the oversight regime is up and running.*

2.15 Question 9.11.11.1.

What is your view on the proposed provisions in Article *111 relating to Audit Rules? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.11.6 to 9.11.11.]

- 2.15.1 Respondents indicated general support for the proposed provisions relating to Audit Rules. However, two specific concerns were raised.
- 2.15.2 The first concern was whether there would be the ability to effectively sanction non-Jersey firms that are not ordinarily subject to the disciplinary processes of the ICAEW, for example, Irish firms.
- 2.15.3 *The Commission is satisfied that there would be effective sanctions. To become an eligible auditor a firm would, inter alia, need to agree to be bound by Audit Rules issued by the ICAEW and approved by the Commission. Under these Rules, the audit firm would be contractually bound to submit itself to the disciplinary powers of the ICAEW. These powers would include: the ability of the ICAEW to put restrictions on how the audit firm may carry out its audit work and it will have the ability to fine a firm. In addition, the Registrar of Companies (in Jersey) [now to be the Commission – see 2.12.2 above] would also be able to sanction a firm. Sanctions would include: making a public statement about an auditor (the draft Regulations are to be amended to provide for this to ensure that the sanctions available match the equivalence criteria set by the EC); placing conditions or limitations on an eligible auditor; or, ultimately, revoking its registration so that it would be unlawful for the audit firm to audit share traded companies.*
- 2.15.4 *It should also be noted that under proposed Article 113O(1) the ICAEW would, in order to secure the enforcement of its Rules, be able to apply to the Royal Court for an order enabling it to enforce disciplinary action against an eligible auditor or for an order making the eligible auditor subject to supervision, restraint or conditions.*
- 2.15.5 *The Commission, and the ICAEW, would also, under proposed Article 113P have the ability to pass confidential information which indicated concerns about the performance of an audit firm to the audit firm's national regulator so that it could consider taking appropriate disciplinary action under the legislation or regulatory environment of that jurisdiction.*
- 2.15.6 A second concern that was raised by a respondent was whether the requirement in proposed Article 111(4)(e) for a quality assurance review at least every 3 years, was too frequent. The respondent pointed out that the ICAEW's website indicates that, under its Practice Assurance regime, the ICAEW would carry out a visit at least once every 6 years. The respondent also expressed the view that the Statutory Audit Directive requires a quality assurance review once in every 6 years.
- 2.15.7 *To meet the equivalence requirements of the Statutory Audit Directive, the Island will (inter alia) need to match the requirements of Article 29 of the Directive which sets out requirements in relation to "quality assurance systems". Article 29(h) states that a quality assurance review shall take place at least every 6 years. However, Article 43 of the Directive reduces that period to three years where the audits concerned are of "public-interest entities". A Jersey share traded company would fall within the Directive's definition of a public interest entity.*

2.16 Question 9.12.3.1.

What is your view on the proposed provisions concerning the qualification of auditors as eligible auditors where they are statutory auditors or equivalent? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.12.1 to 9.12.3.]

2.16.1 Respondents were content with the provisions in proposed Article 112 concerning the qualification of auditors as eligible auditors where they are statutory auditors or equivalent.

2.16.2 *Notwithstanding this positive response, the Commission has decided to remove proposed Article 112 because it would result in a number of legal and practical complications which would, in the Commission's view, outweigh the benefit that it would have given to what is expected to be a very small number of (overseas) audit firms and the handful of Jersey companies they audit.*

2.16.3 *These complications include the fact that under proposed Article 113(2) a share traded company cannot appoint an auditor other than an eligible auditor. But, due to the way the registration requirements under the proposed revised Part 16 work, an audit firm wishing to utilise Article 112 could not register with an EU member state as a statutory auditor without breaching Jersey law. A 'catch-22' situation would arise.*

2.16.4 *In addition, the proposed Article 112 would allow an audit firm that was not majority controlled by members of a recognized professional body to be appointed as the auditor of a share traded company. For the reasons given in paragraphs 2.13.4 to 2.13.6 the Commission considers that, as a matter of policy, this is undesirable. Proposed Article 112 would also allow an individual who was not a member of a recognized professional body to be responsible in an audit firm for the audit of a Jersey company despite having no experience in Jersey company law (or a similar regime, such as that in the United Kingdom or Ireland). And whilst this could be addressed by the introduction of a method to test that the individual has adequate knowledge and experience (as described in paragraph 2.13.6) the Commission considers that this would be complex to provide for in legislation, complex to administer in practice, and would require the use of a disproportionate level of the Commission's limited resources.*

2.16.5 *The Commission has also concluded that, as a matter of policy - and, in particular, to protect Jersey's reputation and integrity in commercial and financial matters - all auditors of share traded companies, wherever located, should be subject to the Jersey oversight regime provided for under proposed Article 111, as opposed to relying upon another jurisdiction's regime. This is particularly important when the potential negative impact of an auditor that may have acted improperly, or in an unfit or improper manner, is considered.*

2.16.6 *In reflecting on the appropriateness or otherwise of proposed Article 112, the Commission has also been mindful of how such a regime may be viewed by the European Commission (the "EC"). Despite provisions for qualification being outside the scope of the third country provisions in the Directive, we anticipate that the EC may be uncomfortable with an auditor being allowed to audit a Jersey share traded company without there being a mechanism to be reasonably confident that the auditor is likely to have an adequate understanding of Jersey company law. Given that the primary purpose of the Regulations is to address the impact of the Directive on local audit firms we would not wish to prejudice that purpose in the course of trying to*

address a situation that will affect only a very small number of (overseas) audit firms and the handful of Jersey companies they audit.

2.17 Question 9.14.3.1.

What is your view on the proposed requirement for an audit report to be signed by the responsible individual on behalf of the firm? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.14.2 to 9.14.3.]

- 2.17.1 Respondents were content with the proposed requirement for an audit report to be signed by a responsible individual on behalf of the firm. However, two amendments to proposed Article 113A were suggested.
- 2.17.2 The first was that Article 113A should state that the naming of the responsible individual in the audit report would not subject that person to any civil liability to which they would not otherwise be subject. The respondent noted that such a provision is included in section 504 of the United Kingdom's Companies Act 2006.
- 2.17.3 *The Commission intends to amend proposed Article 113A in line with this suggestion.*
- 2.17.4 The second amendment suggested was to require the responsible individual's designatory letters (such as ACA, CA, ACCA, etc) or professional qualification (such as 'chartered accountant') to be disclosed in the audit report.
- 2.17.5 *The Commission considers that there is merit in a responsible individual's designatory letters or professional qualification being included in the audit report. The proposed wording of Article 113A would not prevent this being done voluntarily, although it would not be mandatory. The Commission is of the view that, as the Statutory Audit Directive does not make such disclosures mandatory, it would seem unreasonable to set a disclosure standard on auditors of Jersey companies that is higher than that prevailing in Europe.*
- 2.17.6 Respondents queried whether Jersey would be introducing a similar authorisation regime for responsible individuals to that which applies in the UK. In the UK, the Audit Regulations issued jointly by the ICAEW, ICAS and ICAI require an individual to be approved by one of those Institutes as a 'responsible individual' before being able to sign audit reports. Approval will only be granted where, inter alia, the applicant is appropriately qualified, has relevant auditing experience, and adequate knowledge of UK company and tax law (evidenced by passing an 'aptitude test' - where the person is not a member of the ICAEW, ICAS, ACCA or ICAI). In addition, where the applicant is not a member of one of the Institutes they are required to become an "affiliate member" of the registering Institute so that they would be bound by the standards and disciplinary procedure of the Institute.
- 2.17.7 *There is no intention to introduce in Jersey a requirement for an individual to apply to one of the Institutes mentioned above and/or the Commission for 'recognised individual' status. To do so would, in the Commission's view, add an unnecessary layer of complexity and bureaucracy to the auditor oversight regime given the small number of responsible individuals in affected audit firms. However, the necessary quid pro quo is to restrict who may sign an audit report, as set out in 2.17.10 below.*

- 2.17.8 *What the Commission envisages (and this has been agreed with the ICAEW and the other Crown Dependencies) is that the proposed Audit Rules would define a 'responsible individual' as "an individual who is responsible for examining and reporting on the accounts of a share traded company". The Audit Rules would permit a firm to designate as a responsible individual any principal or employee of the firm where the firm is satisfied that the person:*
- 2.17.8.1 *is permitted under the Companies (Jersey) Law 1991 to examine and report on the accounts of a share traded company [i.e. the individual must be a member of the ICAEW, ICAS, ACCA or ICAI and be permitted by their Institute to engage in public practice];*
 - 2.17.8.2 *has confirmed in writing to the Commission and the audit firm that they will abide by the Audit Rules; and*
 - 2.17.8.3 *is competent to conduct audit work.*
- 2.17.9 *There would be no requirement for the designation of a person as a responsible individual to be approved by anybody outside of the audit firm.*
- 2.17.10 *Unlike in the UK there is no intention to allow a person other than a member of the ICAEW, ICAS, ACCA or ICAI to be able to act as a responsible individual. In the UK, a person who is not a member of one of those institutes may become a responsible individual where, inter alia, they pass an 'aptitude test, to demonstrate adequate knowledge of UK company and tax law. There is no equivalent test available in Jersey, nor is one planned, because there is unlikely to be sufficient demand to justify the allocation of resources to developing such a test. However, if market developments resulted in an increased demand for individuals who were not a member of one of the Institutes mentioned above to be appointed as responsible individuals, the Commission would consider assisting with the development of an aptitude test, if it would be economic to do so.*
- 2.17.11 *The Commission would emphasise that these proposed provisions in relation to responsible individuals would apply in respect of the audit of share traded companies only.*

2.18 Question 9.15.5.1.

What is your view on the proposal to make it a criminal offence for an eligible auditor or responsible individual to breach the Audit Rules? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.15.2 to 9.15.5.]

- 2.18.1 Respondents supported the inclusion of adequate sanctions in the proposed legislation. The JSCCA expressed the view that it was questionable that a breach of the Audit Rules should be a criminal offence, but it did not consider it unreasonable for the Royal Court to be able to sanction an auditor. The JSCCA, on balance, decided that the proposed sanctions set out in Regulations did not give rise to any significant objections.
- 2.18.2 *Subsequent to the publication of the Consultation Paper the Commission, after discussion with the ICAEW and the other Crown Dependencies, has reflected on whether it is appropriate to make it a criminal offence for an eligible auditor or responsible individual to breach the Audit Rules. It has concluded that the status of*

compliance with the Audit Rules should be equivalent to that in the UK (i.e. contractual) and, given the other sanctions that would be available to deal with breaches (e.g. disciplinary action by the ICAEW and/or the Commission), there is no compelling need to include a criminal offence for breaches. In addition, the ICAEW was uncomfortable with the concept of a criminal offence being committed when a breach of the Audit Rules occurred: it was concerned that such a provision would inhibit its discretion to deal with breaches as it sees fit under the disciplinary process set out in the Audit Rules. The Law Draftsman will be instructed to delete proposed Article 113B(11).

2.19 Question 9.15.6.1.

What is your view on the proposed requirement for an eligible auditor to have to maintain its working papers in the English language and make those working papers available to the Commission or to a recognized professional body, upon demand? If you have any concerns, please explain what they are and give reasons for them. [Paragraph 9.15.6.]

2.19.1 Respondents supported the proposed requirement.

2.20 Question 9.17.8.1.

What is your view on the proposed provisions in Article *113D concerning the eligibility of auditors? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.17.1 to 9.17.8.]

2.20.1 Respondents were content with the proposed provisions concerning the eligibility of auditors.

2.21 Question 9.17.8.2.

Do you think that the Commission should continue be given the discretion to authorize auditors under the provisions of Article *113D or should the discretion be given to the Registrar? Please give reasons for your answer. [Paragraph 9.17.7.]

2.21.1 The feedback from respondents indicated that most felt that the discretion should remain with the Commission.

2.22 Question 9.18.2.1.

Do you consider that it would be appropriate to set independence requirements in an Order rather than in primary legislation? If you have any concerns, please explain what they are and give reasons for them. [Paragraph 9.18.2.]

2.22.1 Respondents supported the proposal to set independence requirements in secondary rather than primary legislation (although one respondent mistakenly thought that the independence provisions would apply only to share traded companies).

2.23 Question 9.22.3.1.

What is your view on the Regulation making power set out in Article *113I to enable an eligible auditor to be required to publish a transparency report? If you have any concerns, please explain what they are and give reasons for them. [9.22.1 to 9.22.3.]

2.23.1 Respondents were content with the proposed Regulation making power.

2.24 Question 9.28.5.1.

What is your view on the provisions in Articles *113K, *113L, *113M and *113N? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.25 to 9.28.]

2.24.1 Respondents were content with the proposed provisions.

2.25 Question 9.29.5.1.

What is your view on the proposed arrangements in Article *113O for the enforcement of Audit Rules? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.29.1 to 9.29.5.]

2.25.1 Respondents were content with the proposed arrangements.

2.25.2 One respondent raised a query as to how the enforcement provisions would work in respect of non-Jersey firms that are not ordinarily subject to the disciplinary processes of the ICAEW. The Commission has addressed this in its feedback response to question 9.11.11.1.

2.26 Question 9.30.5.1.

What is your view on the information confidentiality provisions in Article *113P? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.30.1 to 9.30.5.]

2.26.1 Respondents were content with the proposed information confidentiality provisions.

2.27 Question 9.31.3.1.

What is your view on the proposed investigatory and enforcement regime to be included in the amended Part 19? If you have any concerns, please explain what they are and give reasons for them. [Paragraphs 9.31.1 to 9.31.3.]

2.27.1 Respondents were content with the proposed investigatory and enforcement regime.

3 NEXT STEPS

3.1 Progressing the Regulations

- 3.1.1 The Commission has given the Law Draftsman instructions to make amendments to the Regulations as set out in section 2, together with some other minor amendments (primarily to ensure greater consistency and clarity in the language used in the Regulations).
- 3.1.2 The Commission has also received comments from the Law Officers' Department following its human rights and penalties review. The Commission is discussing with the Law Draftsman what amendments to the Regulations might be necessary to address those comments.
- 3.1.3 Once the Regulations are in final draft form they will be presented to the Board of Commissioners for approval. Subject to approval being forthcoming, the Regulations will then be recommended to the Minister for Economic Development (the "**Minister**"). If approved by the Minister, the Regulations will then be laid before the States of Jersey for consideration and adoption.
- 3.1.4 It is hoped that the Regulations will be lodged by the summer so that they can be debated by the States of Jersey during the early part of its second session starting in September 2009.

APPENDIX A

List of respondents

- Jersey Finance Limited
- Jersey Association of Chartered and Certified Accountants
- KPMG Channel Islands Limited
- Ogier Fund Administration Limited