

FEEDBACK ON CONSULTATION PAPER NO. 4 2012

MISCELLANEOUS AMENDMENTS TO REGULATORY LEGISLATION

Proposals for a variety of amendments that constitute routine maintenance of the laws that regulate the financial services industry, and other non-financial services businesses and professions, in Jersey.

CONSULTATION FEEDBACK

Please note that terms in italics are defined in the Glossary of Terms.

This paper reports on the responses received by the *Commission* on the *CP*.

Further enquiries concerning the consultation may be directed to:

Andrew Le Brun

Director, Office of the Director General
Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Telephone: +44 (0) 1534 822065

Email: A.LebBrun@jerseyfsc.org

GLOSSARY OF TERMS

For the purposes of this Feedback Paper, the following terms should be understood to have the meaning shown by this table. The terms and their meanings are intended only to aid clarity to the Feedback Paper: they are not formal definitions.

2007 Regulations	means the Community Provisions (Wire Transfers) (Jersey) Regulations 2007, as amended.
2012 Regulations	means the Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2012.
BB(J)L	means the Banking Business (Jersey) Law 1991, as amended.
CIF(J)L	means the Collective Investment Funds (Jersey) Law 1988, as amended.
Commission	means the Jersey Financial Services Commission.
Commission Law	means the Financial Services Commission (Jersey) Law 1998, as amended.
Court	means the Royal Court of Jersey.
CP	means Consultation Paper No. 4 2012: Miscellaneous Amendments to Regulatory Legislation.
ECHR	means the European Convention on Human Rights.
FS(J)L	means the Financial Services (Jersey) Law 1998, as amended.
Handbook	means the <i>Commission's Handbook on International Co-operation and Information Exchange</i> .
IB(J)L	means the Insurance Business (Jersey) Law 1996, as amended.
Industry	means the financial services industry in Jersey.
Jersey Finance	means Jersey Finance Limited.
Omnibus Law	means the Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 201- (see paragraph 1.1.4.1).
Omnibus Order	means the Financial Regulation (Miscellaneous Provisions) (Jersey) Order 201- (see paragraph 1.1.4.2).
regulated business	means a person who is registered, or holds a permit or a certificate, as applicable, under one or more of the <i>regulatory laws</i> or the <i>SB(J)L</i> .
Regulatory Laws	means, together, the <i>BB(J)L</i> , the <i>CIF(J)L</i> , the <i>FS(J)L</i> , and the <i>IB(J)L</i> .

relevant supervisory authority	in relation to a country or territory outside Jersey, means an authority discharging in that country or territory any function that is the same as, or similar to, a function of the <i>Commission</i> .
SB(J)L	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.
States	means the States of Jersey (the Island's parliament).
TCB	means trust company business.

Contents

GLOSSARY OF TERMS	4
Contents	6
1 EXECUTIVE SUMMARY	7
1.1 Overview	7
1.2 What is proposed and why?	8
1.3 Feedback received	9
1.4 Next Steps	9
2 SUMMARY OF RESPONSES - THE OMNIBUS LAW	10
2.1 Structure of this section	10
2.2 Consultation	10
2.3 Amendments to the CIF(J)L	11
2.4 Amendments to the Bankruptcy (Désastre) (Jersey) Law 1990	15
2.5 Amendments to the BB(J)L	15
2.6 Amendments to the IB(J)L	16
2.7 Amendments to the FS(J)L	19
2.8 Amendments to the SB(J)L	21
3 SUMMARY OF RESPONSES - THE OMNIBUS ORDER	24
3.1 Background of this section	24
3.2 Financial Services (Financial Service Business) (Jersey) Order 2009	24
4 POST-CONSULTATION CHANGES TO THE DRAFT LEGISLATION	26
4.1 Background of this section	26
4.2 The <i>Omnibus Law</i>	26
APPENDIX A	29
Table A1: Summary of Significant Amendments	29
Table A2: Summary of Minor Amendments	31
APPENDIX B	32
List of respondents to the Consultation Paper	32
APPENDIX C	33
Revised draft of Article 36 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008	33

1 EXECUTIVE SUMMARY

1.1 Overview

1.1.1 In July 2012 the *Commission* published the *CP* to seek views on proposed changes to legislation under which the *Industry* is regulated. A copy of the *CP* and of each of the two items of draft legislation (see paragraphs 1.1.4.1 and 1.1.4.2 below), may be viewed or downloaded from the *Commission's* website¹. Alternatively a hard copy may be obtained by contacting the *Commission*.

1.1.2 The proposed changes comprise a miscellany of matters that had emerged over the two or three years prior to the *CP*, as a result of the use and continuous review of the regulatory process undertaken by the *Commission*.

1.1.3 Some of the amendments will affect only one particular item of legislation. However, a secondary objective of the *Commission* is to enhance the level of consistency in the legislation across all sectors of the *Industry*. To that end, where the need for change has arisen in one area, the opportunity has often been taken to consider, and amend as appropriate, the corresponding provisions in the other *Regulatory Laws*.

1.1.4 Although the changes are being made to a range of laws and subordinate legislation, they will be introduced in the form of two statutes:

1.1.4.1 The *Omnibus Law*, which will make amendments to –

- the *CIF(J)L*;
- the Bankruptcy (Désastre) (Jersey) Law 1990, as amended;
- the *BB(J)L*;
- the *IB(J)L*;
- the *FS(J)L*;
- the *SB(J)L*; and
- the *2007 Regulations*.

1.1.4.2 The *Omnibus Order*, which will make amendments to:

- the Banking Business (Appointment of a Manager) (Jersey) Order 2008;
- the Collective Investment Funds (Appointment of a Manager) (Jersey) Order 2008;

¹ http://www.jerseyfsc.org/the_commission/general_information/consultation_papers/consultation_papers.asp

- the Financial Services (Appointment of a Manager) (Jersey) Order 2008;
- the Financial Services (Financial Service Business) (Jersey) Order 2009;
- the Insurance Business (Solvency Margin) (Jersey) Order 1996; and
- the Insurance Business (Appointment of a Manager) (Jersey) Order 2008.

1.2 What is proposed and why?

1.2.1 The nature and purpose of the proposed changes may be classified in the following ways:

1.2.1.1 enhancements to the *Commission's* powers to act in certain circumstances: examples include the powers to investigate matters of concern; and the ability to act in support of another regulator;

1.2.1.2 clarification of an existing provision;

1.2.1.3 extension of powers granted to the *Court* (e.g. to make orders for restitution in certain circumstances);

1.2.1.4 provision of additional powers for the *States* to make Regulations;

1.2.1.5 amendments to achieve (or maintain) consistency across all the *Regulatory Laws*;

1.2.1.6 amendments to the *SB(J)L* following its initial period on the statute books;

1.2.1.7 ancillary minor drafting corrections that arose when preparing the other changes.

1.2.2 A summary of the changes and their applicability to the various Laws and Orders is provided as Appendix A, in the form of two tables:

1.2.2.1 Table A1: Summary of Significant Amendments.

1.2.2.2 Table A2: Summary of Minor Amendments.

1.2.3 One further amendment included in the draft *Omnibus Order* and explained in Section 5.4 of the *CP*, comprised a redefinition of Class 'O' in the Financial Services (Financial Service Business) (Jersey) Order 2009. Although the respondents generally supported the proposed new definition, subsequent to the *CP* the *Commission* has identified a separate difficulty, which has been the cause of much of the delay in publishing this Feedback Paper. It has now been accepted that resolution will require further work which will need to be the subject of a separate consultation. Accordingly, the proposed changes to the definition of Class 'O' have been withdrawn from the *Omnibus Order* pending the resolution of the separate difficulty.

1.3 Feedback received

- 1.3.1 Most of the comments received by the *Commission* were presented by *Jersey Finance*, which consolidated comments it had received from a trade association and two other submissions from members of a large banking group: both submissions from the banking group were also sent directly to the *Commission*. The *Commission* also received a comment from a different bank, regarding one aspect of one of the changes in the *Omnibus Order*. A full list of respondents is provided in Appendix B.
- 1.3.2 Sections 2 and 3 of this Feedback Paper present a summary of the comments received with the *Commission's* response, as appropriate, to each.
- 1.3.3 The *Commission* is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this Feedback Paper.
- 1.3.4 During the period of the consultation, the *Commission* also sought and obtained a legal opinion on the compatibility of the *Omnibus Law* with the *ECHR*. That opinion considered in detail those provisions of the *Omnibus Law* that engage one or more of the Articles of the *ECHR* and concluded that, even so, the *Omnibus Law* is compatible with the *ECHR*.

1.4 Next Steps

- 1.4.1 Following publication of this Feedback Paper, the draft legislation will be presented to the Chief Minister for his consideration so that the *Omnibus Law* may be lodged *au Greffe* for debate by the *States*, and for the *Omnibus Order* to be made.
- 1.4.2 The draft legislation will come into force as follows:
 - 1.4.2.1 The *Omnibus Law*, if adopted by the *States*, will come into force seven days after it has been registered in the *Court*, which can only take place once the Privy Council has sanctioned it. It usually takes around three months for the sanction of the Privy Council to be granted.
 - 1.4.2.2 The *Omnibus Order* will be brought into force seven days after it has been signed by the Chief Minister.

2 SUMMARY OF RESPONSES - THE OMNIBUS LAW

2.1 Structure of this section

- 2.1.1 Section 2.2 below contains the comments received, and the *Commission's* response to those comments, in relation to the proposed arrangements for the introduction of the legislation described under Section 2 of the *CP*.
- 2.1.2 The questions posed in the *CP* in relation to the *Omnibus Law* are set out in sections 2.2 to 2.8 below. Each section also contains a summary of the comments received and, as appropriate, the *Commission's* response to those comments.

2.2 Consultation

(Section 2 of the *CP*)

Paragraphs 2.3.4 and 2.3.5 of the *CP*

- 2.3.4. If there is any reason why these arrangements for the introduction of the amendments may cause a difficulty, please provide an explanation.
- 2.3.5. If you consider that there should be transitional provisions in relation to any of the changes please explain why you consider it necessary, where such provisions are needed and suggestions for what they should comprise.

- 2.2.1 None of the respondents considered that the arrangements for the introduction of the amendments might cause difficulty. However, one respondent requested that, in relation to the proposed change to the description for Class 'O' (Article 4 of the *Omnibus Order*, as circulated with the *CP*), that before the change comes into force, there be time allowed for *Industry* to make changes, as necessary, to its policies and procedures to ensure compliance.

Commission response

- 2.2.2 As explained in paragraph 1.2.3 above, it has been necessary to withdraw the proposed change to the description of Class 'O'. As a resolution to the new issue is developed consideration will be given to making suitable provision for industry to ensure that it can comply when the amendment comes into force.

2.3 Amendments to the CIF(J)L

(Part 1 of the *Omnibus Law* - from page 7)

Paragraph 4.1.11 of the CP

Please identify any of these changes that you consider is unreasonable or is likely to have unacceptable consequences and give your reasons for your views.

2.3.1 The question refers to paragraphs 4.1.1 to 4.1.10.8 of the *CP* covering the following Articles of the *Omnibus Law*:

2.3.1.1 **Article 2** - Interpretation (Articles 1, 22 and 29 of the *CIF(J)L*);

2.3.1.2 **Article 3** - Grant or refusal of a permit (Article 7 of the *CIF(J)L*);

2.3.1.3 **Article 4** - Delay in decisions of the *Commission* taking effect (Article 8E of the *CIF(J)L*); and

2.3.1.4 **Article 5** - Powers of the *Commission* to obtain information and documents (Article 9 of the *CIF(J)L*).

Summary of responses

2.3.2 The only responses received were in relation to Article 5 of the *Omnibus Law*. The comments of two of the respondents were simply that they supported the intention to allow the *Commission* to require past and present employees to provide information and documents.

2.3.3 The other respondent expressed a number of concerns over the re-written Article:

2.3.3.1 The respondent thought that it would be unreasonable for the *Commission* to be able to impose its demands, under threat of criminal sanctions, on persons who are not, and never have been, regulated by the *Commission*: it was felt that all requests of the *Commission* should be subject to an order of the *Court*, with the subject having a right of appeal.

2.3.3.2 The respondent commented that it is unreasonable for there to be a right of access to premises, apparently without notice.

2.3.3.3 There was also concern that the absence of a restriction on the category of premises meant that it would allow access even to the residence of an individual.

2.3.3.4 The respondent thought that a right of search and seizure or interrogation was inferred by these powers.

2.3.3.5 In relation to the criminal sanction (an unlimited fine and/or 6 months in prison), for failure to comply with a requirement or for obstruction of lawful access to premises, the respondent felt that the lack of any guidance on what would constitute "reasonable excuse" could have unacceptable consequences, especially in view of the wider range of persons who could be affected.

- 2.3.3.6 Finally, the respondent noted that the Article provides protection from criminal prosecution as a result of complying with a requirement under the Article, but not from any civil liability.

Commission response

- 2.3.4 Although the Article has been completely re-written (principally to achieve the maximum level of consistency across the *Regulatory Laws* and the *SB(J)L*), the powers of the *Commission* remain generally the same as they are at present in all the *Regulatory Laws*, and have been for many years. A summary of the more significant changes for each of the *Regulatory Laws* was provided in the *CP*: for the *CIF(J)L* this was at paragraph 4.1.10 and it will be seen that, except for widening the range of persons on whom a requirement may be made, the changes increase the protection for the recipient of a request (e.g. by introducing a limit on the nature of information or documents that must be provided).
- 2.3.5 As a regulator, it is essential that the *Commission* has the powers it needs to carry out its functions, including being able to obtain necessary information and documents from wherever they may be. It already has some powers to make such requests of those who may not be regulated, for example an associate of a regulated person; and anyone who appears to be in possession of what is sought. Although the legal opinion obtained by the *Commission* is that these provisions are compatible with the *ECHR* (see paragraph 1.3.4 above), the *Commission* is still required always to act in a way that is consistent with the Human Rights (Jersey) Law 2000 and may only request what it is reasonable for that person to provide.
- 2.3.6 Although a separate notice is not required to obtain access to premises, such access is only permitted where there has already been a notice served under paragraphs (1), (2) or (3) of the Article.
- 2.3.7 The respondent is correct in understanding that the revised Article allows access to the residence of an individual: as does the present wording. However, it should be noted that access may be only to premises occupied by the person on whom a notice has been served, or where the information or documents are kept by that person; must be at reasonable times, and is only for the purposes of obtaining the specified information or documents.
- 2.3.8 The *Commission's* understanding is that there is no right of search and seizure or interrogation inferred by the wording of this Article. One reason is the limiting conditions applicable to the powers (as described in the previous paragraph). Equally significant is that another Article in each of the *Regulatory Laws* (in the *CIF(J)L*, Article 24) makes explicit provision for search and seizure under the authority of a Bailiff's warrant.
- 2.3.9 It is not usual for guidance to be given on what constitutes a "reasonable excuse" in such situations (see, for example, Article 32 of the Gambling (Jersey) Law 2012). The decision ultimately will be made by the *Court* which will take into account all the circumstances; however, this will only happen if the *Commission* refers the matter to the Attorney General and the Attorney General

considers that it is in the public interest to prosecute. The occupier of the premises need have no doubt that the request to gain access is valid because the officer or agent may be required to produce evidence of his/her authority.

2.3.10 Without the protection from criminal liability, a person on whom a notice is served could be faced with having to choose between not complying (a criminal offence) and self-incrimination. No civil liability is likely to arise from providing information or documents to the *Commission* or answering its questions.

Paragraph 4.1.20 of the CP

Are any contingent issues likely to arise from the *Commission* having the ability under any of the *Regulatory Laws* to exchange restricted information in such circumstances? If so, what are they?

2.3.11 Although the question referred particularly to paragraphs 4.1.17 to 4.1.19 of the *CP* which concerned an amendment to Article 28 of the *CIF(J)L* ("Permitted disclosure of restricted information"), it followed other paragraphs which covered the following Articles of the *Omnibus Law*:

2.3.11.1 **Article 6** - Notification of change of principal person or key person and change of shareholding (Article 12B of the *CIF(J)L*);

2.3.11.2 **Article 7** - Entry and search of premises (Article 24 of the *CIF(J)L*); and

2.3.11.3 **Article 8** - Co-operation with other regulators (Article 25 of the *CIF(J)L*).

Summary of responses

2.3.12 No comments were received in relation to the particular question.

2.3.13 One comment was made in relation to Article 6 of the *Omnibus Law*, which will permit the *Commission* to require verification of information or documents it needs to be satisfied that a potential principal person or key person is fit and proper to hold that position. The respondent sought reassurance that the additional level of approval (sic)² would not restrict or delay the ability of a regulated entity to progress business decisions in a timely manner.

2.3.14 In relation to Article 8 of the *Omnibus Law* (which will extend the range of powers that the *Commission* may use in order to co-operate with a *relevant supervisory authority*), the same respondent also asked whether the legitimacy of the request from the other regulator would be tested before the power is exercised and whether the powers would be used in co-operation with other types of regulatory bodies, for example the IRS (by which the *Commission* understands the respondent to mean the Inland Revenue Service of the USA).

² The *Commission* does not "approve" the appointment of principal persons or key persons but it does have the right to object if it appears to the *Commission* that the nominee (or holder) is not fit and proper to hold the position.

Commission Response

- 2.3.15 The ability to ask for verification is only likely to be used where the *Commission* considers that some form of corroboration is essential and that requesting this from the person concerned will be quicker and more efficient than if it sought that corroboration for itself. Thus its purpose is to expedite the process.
- 2.3.16 The powers under Article 25 of the *CIF(J)L* (and the equivalent in the other laws) may only be exercised in co-operation with a *relevant supervisory authority* which is a term that is defined in Article 1 of each of the *Regulatory Laws* and the *SB(J)L* so as to have the same meaning in each. Further guidance on how the *Commission* interprets that definition, and the factors it takes into account when deciding whether or not to act, will be found in the *Handbook*, published on the *Commission's* website³.
- 2.3.17 It would be impractical in a document such as this to attempt to consider all the different types of regulatory bodies there may be in other jurisdictions and all the circumstances in which the *Commission* may be asked to co-operate by exercising one or more of the powers. As may be seen from the *Handbook*, only rarely is a body concerned with collecting revenue likely to satisfy the criteria for any of the powers to be exercised. However, even if the criteria are met, the provisions of each of the *Regulatory Laws* and the *SB(J)L* (e.g. see Article 25(2) and (3) of the *CIF(J)L*), include a prohibition on the powers being exercised unless the *Commission* is satisfied that the request has been made only for the purposes of obtaining assistance in the exercise of one or more of the supervisory functions of the body making the request (**N.B.** Underlined text has been added to emphasise that a supervisory function is one that is not connected with the collection of tax revenue).

Paragraphs 4.1.27 and 4.1.28 of the CP

If you have any concerns regarding the additional circumstances in which the Court may make orders for restitution under the *CIF(J)L*, please explain what they are.

Do you consider that there are any other circumstances in which the Court should be able to make such orders under the *CIF(J)L*? If so, what are they?

- 2.3.18 This question refers to paragraphs 4.1.21 to 4.1.26 of the *CP* covering the following Articles of the *Omnibus Law*:
- 2.3.18.1 **Article 10** – Communication by an auditor and other persons with the *Commission* (Article 32 of the *CIF(J)L*); and
- 2.3.18.2 **Article 11** – Application to the *Court* for a restitution order (Article 34 of the *CIF(J)L*).

³ http://www.jerseyfsc.org/pdf/International_Co-operation_Handbook_Nov_2012_English.pdf

Summary of responses

2.3.19 In the only response received to these questions, the respondent fully supported the aim of consumer protection but was concerned that the party committing the offence may not be in a position to make restitution and that this should be taken into account in making the order.

Commission Response

2.3.20 The Article affords the *Court* complete discretion to make whatever order it considers to be just. This does not preclude it taking into account whether or not anyone subject to the order will have the ability to pay. There may be circumstances when it is right for the *Court* to make a restitution order even though the person who must make the payment does not appear to have the necessary resources: for example, the combination of the order and the lack of resources may trigger a compensation scheme from which payment is made.

2.4 Amendments to the Bankruptcy (Désastre) (Jersey) Law 1990

(Part 2 of the *Omnibus Law* - from page 14)

2.4.1 There were no specific questions posed in relation to the amendments to this law and no comments were received from any of the respondents.

2.5 Amendments to the *BB(J)L*

(Part 3 of the *Omnibus Law* - from page 15)

Paragraphs 4.3.15 and 4.3.16 of the *CP*

If you have any concerns regarding the additional circumstances in which the *Court* may make orders for restitution under the *BB(J)L*, please explain what they are.

Do you consider that there are any other circumstances in which the *Court* should be able to make such orders under the *BB(J)L*? If so, what are they?

2.5.1 The question relates particularly to paragraphs 4.3.11 to 4.3.14 of the *CP*, dealing with Article 19 of the *Omnibus Law* that will amend Article 19 of the *BB(J)L* (Powers of Intervention). However, it also follows paragraphs 4.3.1 to 4.3.10 of the *CP* covering the following Articles of the *Omnibus Law*:

2.5.1.1 **Article 16** – Interpretation (Article 1 of the *BB(J)L*);

2.5.1.2 **Article 17** – Notification of new or increased control (Article 14 of the *BB(J)L*); and

2.5.1.3 **Article 18** – Delay in decisions of the *Commission* taking effect (Article 18 of the *BB(J)L*).

Summary of responses

- 2.5.2 None of the respondents expressed any concerns or offered any other suggestions in relation to Article 19 of the *Omnibus Law*. No comments were received concerning any of the other amendments.

Paragraph 4.3.20 of the *CP*

Please identify any of these changes that you consider is unreasonable or is likely to have unacceptable consequences and give your reasons for your views.

- 2.5.3 The question refers to paragraphs 4.3.17 to 4.3.19.8 of the *CP* covering Article 20 – Powers to obtain information and documents (Article 26 of the *BB(J)L*).

Summary of responses

- 2.5.4 One respondent thought that the re-drafting of the Article did not make it clear that there would no longer be a right of entry without notice, as mentioned in the *CP*.
- 2.5.5 The same respondent also applied to this question the comments made in relation to Article 9 of the *CIF(J)L* (see paragraph 2.3.3 above).

Commission Response

- 2.5.6 The removal of the right of entry without notice results from the repeal of Article 27 of the *BB(J)L*. At present, this right is only available under the *BB(J)L* and not under any of the other *Regulatory Laws* or the *SB(J)L*. The *CP* drew attention to this part of the change to the *BB(J)L* because it would not otherwise be immediately obvious.
- 2.5.7 Please see paragraphs 2.3.4 to 2.3.10 for the *Commission's* response to the points made in common with the *CIF(J)L*.

2.6 Amendments to the *IB(J)L*

(Part 4 of the *Omnibus Law* - from page 24)

Paragraph 4.4.11 of the *CP*

Please identify any of these changes that you consider is unreasonable or is likely to have unacceptable consequences, and give your reasons for your views.

- 2.6.1 The question relates particularly to paragraphs 4.4.8 to 4.4.10 of the *CP*, which describe the propose amendments under Articles 32 & 34 of the *Omnibus Law* to Article 10 & 12 of the *IB(J)L* (Powers to obtain information and documents). The question also follows paragraphs 4.4.1 to 4.4.7 of the *CP* covering the following Articles of the *Omnibus Law*:
- 2.6.1.1 **Article 29** – Interpretation (Article 1 of the *IB(J)L*);

2.6.1.2 **Article 30** – Refusal or cancellation of a permit (Article 7 of the *IB(J)L*); and

2.6.1.3 **Article 31** – Delay in *Commission* decisions taking effect (Article 8A of the *IB(J)L*).

Summary of responses

2.6.2 In relation to the changes to Article 10 of the *IB(J)L*, one respondent referred back to the comments previously in relation to Article 9 of the *CIF(J)L* (see paragraph 2.3.3 above).

2.6.3 Another respondent similarly applied the comments made in response to the question posed at paragraph 4.1.20 of the *CP*. However, the *Commission* believes this was a slip because that question related to the proposed amendments to Article 28 of the *CIF(J)L* (see paragraph 2.3.13 and 2.3.14 above), which were concerned with the ability of the *Commission* to co-operate with *relevant supervisory authorities*. It is assumed that the respondent intended to apply the comments made in relation to the equivalent changes to the *CIF(J)L* (see paragraph 2.3.2 above), which were generally supportive of the proposed amendment.

Commission Response

2.6.4 Please see paragraphs 2.3.4 to 2.3.10 and 2.3.15 to 2.3.16 for the *Commission's* response to the points made in common with the *CIF(J)L*.

Paragraph 4.4.22 of the CP

Do you agree that the Commission should have these powers to vary the solvency margin requirements in appropriate cases? If not, please explain your concerns regarding the proposed measures.

2.6.5 The question relates particularly to Article 38 of the *Omnibus Law* which will make changes to Article 24 of the *IB(J)L* (Solvency Margins) described in paragraphs 4.4.15 to 4.4.21 of the *CP*. However the question also follows paragraphs 4.4.12 to 4.4.14 of the *CP* covering the following Articles of the *Omnibus Law*:

2.6.5.1 **Article 33** – Investigations on behalf of the Commission (Article 11 of the *IB(J)L*);

2.6.5.2 **Article 35** – Investigation of suspected contraventions (Article 13 of the *IB(J)L*);

2.6.5.3 **Article 36** – Entry and search of premises (Article 14 of the *IB(J)L*); and

2.6.5.4 **Article 37** – Approval of directors, etc., in relation to Category B permit holders (Article 23 of the *IB(J)L*).

Summary of responses

2.6.6 The three respondents who commented all supported the proposed changes to the arrangements for varying the solvency margins and none made any comment on any of the other topics mentioned in paragraphs 2.6.5.1 to 2.6.5.4 above.

Paragraphs 4.4.29 and 4.4.30 of the CP

If you have any concerns regarding the additional circumstances in which the Court may make orders for restitution under the *IB(J)L*, please explain what they are.

Do you consider that there are any other circumstances in which the Court may make such orders under the *IB(J)L*? If so, what are they?

2.6.7 The question relates particularly to Article 41 of the *Omnibus Law* and the amendments to Article 36B of the *IB(J)L* (Powers of Intervention) that are described by paragraphs 4.4.26 to 4.4.28 of the *CP*. The question also refers to paragraphs 4.4.23 to 4.4.25 of the *CP* covering the following Articles of the *Omnibus Law*:

2.6.7.1 **Article 39** – Permitted disclosures of restricted information (Article 31 of the *IB(J)L*); and

2.6.7.2 **Article 40** – Co-operation with other regulators (Article 33 of the *IB(J)L*).

Summary of responses

2.6.8 Two respondents had no concerns and a third applied the comments made in relation to the proposed amendments to Article 28 of the *CIF(J)L* (see paragraphs 2.3.13 and 2.3.14 above).

Commission Response

2.6.9 Please see paragraphs 2.3.15 to 2.3.17 for the *Commission's* response to the points made in common with the *CIF(J)L*.

2.7 Amendments to the *FS(J)L*

(Part 5 of the *Omnibus Law* - from page 32)

Paragraphs 4.5.6 and 4.5.7 of the *CP*

Does the proposed new wording adequately define all those who are the 'consumers' of services provided by a *TCB*? If not, please explain why you believe it is deficient.

If you consider that in any of the places where the change is to be made, the proposed new wording includes anyone who should not be regarded as a 'consumer' of services provided by a *TCB*, or produces any other anomalous result, please explain why.

2.7.1 The question refers to an amendment described in paragraph 4.5.3 of the *CP*, in relation to Article 44 of the *Omnibus Law*, as it will affect Article 9 of the *FS(J)L* (Refusal of an application and cancellation of a registration). As detailed in paragraph 4.5.5, the same change is then made to a number of other Articles of the *FS(J)L* to ensure consistency in the terminology used to refer to 'consumers' of services provided by a *TCB*.

Summary of responses

2.7.2 All respondents agreed with the proposed new wording and none identified any instances where it might produce any anomalous result.

Paragraphs 4.5.20 and 4.5.21 of the *CP*

If you have any concerns regarding the additional circumstances in which the *Court* may make orders for restitution under the *FS(J)L*, please explain what they are.

Do you consider that there are any other circumstances in which the *Court* should be able to make such orders under the *FS(J)L*? If so, what are they?

2.7.3 The question relates particularly to Article 52 of the *Omnibus Law* and the changes that will be made to Article 26 of the *FS(J)L* (Powers of Intervention), as described in paragraphs 4.5.17 to 4.5.19 of the *CP*. The question also follows paragraphs 4.5.8 to 4.5.16 of the *CP* covering the following Articles of the *Omnibus Law*:

2.7.3.1 **Article 47** - Notification of change of principal person, key person or shareholding (Article 14 of the *FS(J)L*);

2.7.3.2 **Article 48** - Communication by auditors, accountants and others with the Commission (Article 18 of the *FS(J)L*);

2.7.3.3 **Article 49** - Power to issue directions (Article 23 of the *FS(J)L*); and

2.7.3.4 **Articles 50 & 51** -Public Statements (Articles 25 & 25B of the *FS(J)L*).

Summary of responses

- 2.7.4 None of the respondents expressed any concerns or offered any suggestions of other circumstances where the *FS(J)L* should provide for the *Court* to be able to make restitution orders.

Paragraphs 4.5.29 of the *CP*

What, if any, contingent issues might result from the *Commission* being able to require any of the proposed wider range of persons to provide information, documents, or the answers to questions?

Paragraph 4.5.30 of the *CP*

Is it sufficient safeguard that the *Commission* will only be able to ask for what it may reasonably require the person to provide? If not, please describe any additional or alternative safeguards that should be in place.

Paragraph 4.5.37 of the *CP*

Do you consider that some other level of restriction should be applied to the nature of information and documents that the *Commission* and its agents are able to require? If so, please explain what this should be and why.

- 2.7.5 The questions relate to paragraphs 4.5.22 to 4.5.36 of the *CP* covering Article 53 – Powers to require information and documents (Article 32 of the *FS(J)L*).

Summary of responses

- 2.7.6 One respondent applied to the question at paragraph 4.5.29 of the *CP* the comments made in relation to substantially the same amendments proposed for Article 9 of the *CIF(J)L* (see paragraph 2.3.3 above).
- 2.7.7 In response to the same question, another respondent expressed concern that the extended powers may result in the *Commission* adopting a different style of investigation more suited to criminal investigations. Some concern was also expressed that the extended powers could lead to unnecessary and burdensome requests being placed on regulated entities.
- 2.7.8 The other respondent felt that operational effectiveness and accuracy of information may be affected if requests for information were not directed only to a limited range of persons within a *regulated business*, or formerly *regulated business*.
- 2.7.9 With regard to the safeguards referred to by the question at paragraph 4.5.30, two respondents considered that the *CP* did not provide enough information to fully assess how the powers may be used. The third respondent considered that, in view of the introduction (sic) of a statutory offence for not complying with a request notice, the reasonableness of all requests should be validated by an impartial body such as the *Court*.

2.7.10 The only observation made by one respondent to the question at paragraph 4.5.37 was that the information requested should be specific and relevant to a particular regulatory matter and not open to some general fishing expedition. One other respondent sought reassurance that all rules of privilege would apply; and the third had no comment to make.

Commission Response

2.7.11 Please see paragraphs 2.3.4 to 2.3.10 for the *Commission's* response to the points made in common with the *CIF(J)L*.

2.7.12 As already stated at paragraph 2.3.4 above, the provisions and powers contained in the draft Article 32 of the *FS(J)L* are very largely the same as those already in force, but they will appear in the law in a manner that is consistent with the other *Regulatory Laws*.

2.7.13 Notwithstanding the wider range of persons who may be approached directly for information, or the change in the description of the type of information that may be sought, the *Commission* has no intention to change the way in which it currently uses its powers under this Article.

2.7.14 The *Commission* believes that it is impractical for requests for information to be made to only certain categories of individuals. The purpose of widening the range of people to whom requests may be made is to enable such requests to be directed where it is most appropriate, to avoid wasting the time of both *Commission* staff and those who would otherwise have to seek out the information.

2.7.15 It should be noted that a statutory offence for not complying with a request is not new: in the revised wording of the Article, both the offence and the penalty are the same as currently in Article 32(9) of the *FS(J)L*.

2.8 Amendments to the *SB(J)L*

(Part 6 of the *Omnibus Law* - from page 42)

Paragraph 4.6.8 of the *CP*

If you consider that the proposed changes may produce some material difference in the way supervision of the 2007 Regulations will be undertaken, or have any other effect, please explain what this is.

2.8.1 The question refers to paragraphs 4.6.1 to 4.6.7 of the *CP* covering the following Articles of the *Omnibus Law*:

2.8.1.1 **Article 59** – Definitions (Article 1 of the *SB(J)L*); and

2.8.1.2 **Article 60** – Meaning of “supervisory functions” (Article 2 of the *SB(J)L*).

Summary of responses

2.8.2 None of the respondents had any comments on the changes.

Paragraphs 4.6.15 and 4.6.16 of the CP

Please explain any concerns you may have regarding the additional circumstances in which the Court may make orders for restitution under the SB(J)L.

Do you consider that there are any other circumstances in which the Court should be able to make such orders under the SB(J)L? If so, what are they?

2.8.3 The question relates particularly to paragraph 4.6.14 which described proposed changes under Article 64 of the *Omnibus Law* to Article 25 of the *SB(J)L* - Powers of Intervention. However, the question also followed paragraphs 4.6.9 to 4.6.13 of the *CP* covering the following Articles of the *Omnibus Law*:

2.8.3.1 **Article 61** – Prohibition of carrying on unauthorized specified Schedule 2 business (Article 10 of the *SB(J)L*);

2.8.3.2 **Article 62** – Grant or refusal of an application for Level 1 registration (Article 14 of the *SB(J)L*); and

2.8.3.3 **Article 63** – Power to issue a direction (Article 23 of the *SB(J)L*).

Summary of responses

2.8.4 None of the respondents had any comments on any of the changes.

Paragraphs 4.6.22 and 4.6.23 of the CP

What, if any, contingent issues might result from a relevant supervisory body being able to require any of the proposed wider range of persons to provide information, documents, or the answers to questions under the SB(J)L?

Is it sufficient safeguard that the relevant supervisory body will only be able to ask for what it may reasonably require the person to provide? If not, please describe any additional or alternative safeguards that should be in place.

2.8.5 The questions relate particularly to Article 66 of the *Omnibus Law* and the changes it will make to Article 30 of the *SB(J)L* (General power to require information and documents), as described by paragraphs 4.6.19 to 4.6.21 of the *CP*.

2.8.6 The questions also follow paragraphs 4.6.17 and 4.6.18 of the *CP* which were concerned with Article 65 of the *Omnibus Law* that will amend Article 26 of the *SB(J)L* – Public Statements.

Summary of responses

2.8.7 None of the respondents made any comment in relation to Article 65 of the *Omnibus Law*.

- 2.8.8 One respondent applied to Article 66 of the *Omnibus Law* the comments made in relation to substantially the same amendments proposed for Article 9 of the *CIF(J)L* (see paragraph 2.3.3 above) and for Article 32 of the *FS(J)L* (see paragraph 2.7.9 above).
- 2.8.9 Another respondent repeated the comments made in relation to substantially the same amendments proposed for Article 32 of the *FS(J)L* (see paragraph 2.7.8 above).

Commission Response

- 2.8.10 Please see paragraphs 2.3.4 to 2.3.10 and paragraphs 2.7.11 to 2.7.15 for the *Commission's* response to the points made in common with other laws.

Paragraph 4.6.38 of the CP

Do you consider that any of the changes to the gateways is inappropriate in relation to the types of businesses that will be supervised under the *SB(J)L*? If so, please explain why.

Paragraph 4.6.43 of the CP

If you consider that it is inappropriate to make these additional changes also in the *SB(J)L*, please explain why.

- 2.8.11 The questions relate specifically to Article 69 of the *Omnibus Law* and the changes it will make to Article 36 of the *SB(J)L* (Permitted disclosures), as described in paragraphs 4.6.27 to 4.6.37 and 4.6.39 to 4.6.42 of the *CP*.
- 2.8.12 The questions also follow paragraphs 4.6.24 to 4.6.26 of the *CP* covering the following Articles of the *Omnibus Law*:
- 2.8.12.1 **Article 67** – Investigations on behalf of a supervisory body (Article 31 of the *SB(J)L*); and
- 2.8.12.2 **Article 68** – Entry and search of premises (Article 32 of the *SB(J)L*).

Summary of responses

- 2.8.13 None of the respondents had any comments on any of the changes.

3 SUMMARY OF RESPONSES - THE OMNIBUS ORDER

3.1 Background of this section

- 3.1.1 This Section 3 is concerned only with Section 5 of the *CP*, which presented the amendments contained in the *Omnibus Order*.
- 3.1.2 Section 3.2 contains the questions posed in relation to the amendments to the Financial Services (Financial Service Business) (Jersey) Order 2009, the comments received, and the *Commission's* response to those comments.
- 3.1.3 No specific questions were posed in relation to any of the other amendments in the *Omnibus Order* and no comments were received in respect of those amendments.

3.2 Financial Services (Financial Service Business) (Jersey) Order 2009

Questions 5.4.13 and 5.4.14, of the *CP*

Do you agree that the proposed new wording achieves the stated objective? If not, please explain why.

What, if any, difficulties do you consider may arise from the proposed amendment?

- 3.2.1 The question refers to paragraphs 5.4.1 to 5.4.12 of the *CP* which described proposed changes to the description of Class 'O' financial service business.

Summary of responses

- 3.2.2 The respondents agreed that the proposed new description achieves the stated objective and generally supported the change.
- 3.2.3 In relation to the question about any difficulties that may arise, one respondent expressed the view that the provision of accounting and other non-fiduciary services to a trading company that has any shareholder who is not tax-resident in Jersey should not require the service provider to be registered as a trust company business.

Commission Response

- 3.2.4 The *Commission* considers that it would not be appropriate for the providers of such services to be exempt entirely from registration. See paragraph 3.2.7 below for the *Commission's* response regarding allowing Class 'O' to apply where the services are provided to trading companies that have one or more shareholders who are not tax-resident in Jersey.

Questions 5.4.16 of the CP

If you consider either that the description of Class 'O' should apply in such circumstances, or that it should not, please explain your reasons for views.

3.2.5 The question refers to paragraph 5.4.15 of the CP which drew attention to the fact that, as a result of the proposed changes to the description of Class 'O' financial service business, a *regulated business* would not be able to benefit if it provided services to a Jersey trading company the ownership of which includes anyone not tax-resident in Jersey.

Summary of responses

3.2.6 The only response to this question was that Class 'O' should apply in the circumstances mentioned, in order to avoid any perceived barrier to inward investment.

Commission Response

3.2.7 As agreed with accounting and auditing firms that responded to the original proposals for the regulatory relaxations that are now available as Class 'O', the justification for such relaxations was the reduced risk to the Island (see paragraphs 5.4.3 to 5.4.6 of the CP). A key element of the reduced risk is that it is only persons who are tax-resident in Jersey that will benefit from the services provided.

Questions 5.4.18 of the CP

Having regard to the rationale behind Class 'O' (as described under "Background", above), if you are of the opinion that Class 'O' registration should be available on similar terms where the services are provided in relation to such bodies and structures, please explain why. Alternatively, if it is your opinion that it should remain limited to companies, please give your reasons for this.

Summary of responses

3.2.8 All respondents generally supported the idea that, in the interests of consistency, Class 'O' registration should be available where the financial services are provided to entities other than companies and where the ownership structure includes such entities.

Commission Response

3.2.9 The *Commission* has noted the responses and will consider further how the legislation may be developed at a later date to allow Class 'O' to apply in the wider circumstances.

4 POST-CONSULTATION CHANGES TO THE DRAFT LEGISLATION

4.1 Background of this section

- 4.1.1 This section describes the nature and extent of alterations made to the *Omnibus Law* and the *Omnibus Order* subsequent to the closure of the consultation.
- 4.1.2 None of the comments received in respect of the *Omnibus Law* resulted in any changes.
- 4.1.3 The only significant change made to the *Omnibus Order* has been to remove from Article 4 the provisions that proposed a new description of Class ‘O’ financial service business: the reason for this is explained in paragraph 1.2.3 above. Article 4 now comprises only the minor change of the addition of a definition of the term “Law”, which had formerly been omitted.

4.2 The *Omnibus Law*

- 4.2.1 Throughout the *CIF(J)L*, the terms “books and papers” and “books or papers” have been replaced by the word “documents”, the definition of which embraces the meaning given to the other terms by Article 1. This will ensure uniformity of terminology both throughout the *CIF(J)L* and across all the *Regulatory Laws*.
- 4.2.2 In the revised wording of Article 9, paragraph (5) has been split into two paragraphs. In the draft *Omnibus Law* circulated with the *CP*, the paragraph provided that the *Commission* may give notice to any of the limited range of persons specified by paragraph (14) for information requested to be verified or for a report to be prepared by an accountant or other professional person. Under the revised wording, whilst it is still only the limited range of persons who may be required to provide the report (paragraph (6)), anyone served with a notice under paragraph (1) or (2) to provide information or documents may be required to provide verification also (paragraph (5)).
- 4.2.3 The change described in the previous paragraph has been made also to other laws, as follows:–
 - 4.2.3.1 Article 26, paragraphs (6) & (7) of the *BB(J)L*;
 - 4.2.3.2 Article 10, paragraphs (5) & (6) of the *IB(J)L*;
 - 4.2.3.3 Article 32, paragraphs (5) & (6) of the *FS(J)L*; and
 - 4.2.3.4 Article 30, paragraphs (5) & (6) of the *SB(J)L*.

- 4.2.4 Article 9(10) of the *CIF(J)L* has been revised so that when the *Commission* retains a document it is only the person who has provided it who may request a copy of it for the purposes of that person's business. In the draft circulated with the *CP* it could be read that the *Commission* would be obliged to provide a copy to any person who requested it.
- 4.2.5 The change described in the previous paragraph has been made also to other laws, as follows:-
- 4.2.5.1 Article 26, paragraph (11) of the *BB(J)L*;
- 4.2.5.2 Article 10, paragraph (10) of the *IB(J)L*;
- 4.2.5.3 Article 32, paragraph (10) of the *FS(J)L*; and
- 4.2.5.4 Article 30, paragraph (10) of the *SB(J)L*.
- 4.2.6 One of the proposed amendments to the provisions allowing disclosure of restricted information (explained in the *CP* at paragraphs 4.1.18 and 4.1.19), has been deleted from the draft of the *Omnibus Law* because the change has been made by the *2012 Regulations*.
- 4.2.7 In the *SB(J)L*, changes have been made to Article 36 which prescribes the limited circumstances in which restricted information may be disclosed. The changes are substantially the same as those made to the corresponding provisions in the *Regulatory Laws* by the *2012 Regulations* and which were described in detail in the *Commission's* consultation paper "Information Gateways" (No. 3 of 2012), published in June 2012. An outline description of the changes was also included in the *CP* at paragraphs 4.6.39 to 4.6.42.
- 4.2.8 The draft of Article 36 of the *SB(J)L* is attached at Appendix C, marked to show the changes introduced since the draft circulated with the *CP*. The changes also necessitated adding the following definitions to Article 1 of the *SB(J)L*:
- 4.2.8.1 'ESAs' means the European Supervisory Authorities comprising –
- (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);
- (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and
- (c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);
- 4.2.8.2 'supervisor of a securities market' has the meaning given in Article 1(1) of the Financial Services (Jersey) Law 1998, but in reading that definition in the context of this Law the reference in that definition to a relevant supervisory authority within the meaning of the Financial Services (Jersey) Law 1998 is to be taken to be a reference to a relevant overseas supervisory authority within the meaning of this Law."

- 4.2.9 All other post-consultation changes made to the *Omnibus Law* are of a minor nature to correct cross-references where paragraph numbers had changed, or for grammatical or stylistic reasons. None has any material effect on the meaning of the *Omnibus Law*.

APPENDIX A

Table A1: Summary of Significant Amendments

Key: “RB” = regulated business; “FRB” = formerly regulated business

Applicability to each Law or Order is indicated by the relevant Article number(s) in square brackets.

	Topic	Outline	CIF(J)L	BB(J)L	IB(J)L	FS(J)L	SB(J)L
OMNIBUS LAW							
1	Powers to obtain information	1a) Provide for existing powers to be used to obtain information etc from – - any employee of the RB/FRB - any former employee of the RB and FRB - any person who is or was under a contract for services with the RB or FRB - any employee of a person under a contract for services	[9]	[26]	[10, 12]	[32]	[30]
		1b) Information documents and questions, to be only such as the <i>Commission</i> needs to perform its functions	[9]	-	-	[32]	[30]
		1c) Information and documents to be verified in the manner (if any) specified by the <i>Commission</i> .	-	[26]	[10]	[32]	[30]
2	Principal Person	Add the option to require that any additional information be verified in the manner specified.	[12B]	[14]	[23]	[14]	-
3	Delay in decisions taking effect	Clarify criteria on which the <i>Court</i> may make an order – on the application of the <i>Commission</i> – for certain types of direction to take effect earlier than the 1 month period normally required.	[8E]	[18]	[8A]	[23]	-
4	Public Statements	Rectify omission in relation to <i>TCB</i> so that criteria for issue and for reducing the period of notice apply whether or not the person is a RB.	-	-	-	[25/25B]	-
5	Powers of intervention	<i>Court</i> may order restitution when the loss is from a transaction entered into – - on the basis of false or misleading information (not necessarily transacting party); or - with a person in breach of a requirement to register/hold permit, etc.	[34]	[19]	[36B]	[26]	[25]
6	Criteria for refusal of application and revocation of licence	Ground for revocation to include the best interests of existing “clients” of the RB, and/or potential “clients”.	-	-	[7]	[9(4)(e)]	-
7	Co-operation with other regulators	Allow for power of direction to be used to assist another regulator.	[25]	[47]	[33]	[36]	[39]

	Topic	Outline	CIF(J)L	BB(J)L	IB(J)L	FS(J)L	SB(J)L
8	Permitted disclosures of restricted information. (Gateways)	Exemption for info to be passed to enable another to exercise statutory functions in respect of someone for whom the <i>Commission</i> has – or had – statutory functions.	[28]	[44]	[31]	[38]	See item 9 below
9	Solvency Margin (Cat B Permit Holders)	Power for the <i>Commission</i> to vary requirements of the Insurance Business (Solvency Margin) (Jersey) Order 1996, for individual RB.	-	-	[7, 24]	-	-
10	Amendments applicable only to the SB(J)L	Changes in respect of Wire Transfer regulations.					[2, 31]
		Resolve conflict between different meanings of “ <i>prescribed persons</i> ” within the provision for exemption from classes of Schedule 2 business.					[10]
		Revise the list of legislation any breaches of which may be grounds for refusing application or revoking a registration.					[14]
		Delay effect of a direction that bans an individual or requires a business to wind up its affairs (Article 23).					[23]
		Allow public statement to be issued also if unauthorized business has been carried on.					[26(c)]
		Amendments to gateways for disclosure of restricted information.					[36]
11	Bankruptcy Désastre (J) Law	Allow <i>Commission</i> to make application in respect of a certificate holder under CIF. (Paragraph 4.2.2) [14]	-	-	-	-	-
OMNIBUS ORDER							
12	Solvency Margin	Correct manifest error in the definition of “net premium income” in the Insurance Business (Solvency Margin) (J) Order	-	-	5.5	-	-
13	Appointment of Manager	Add to Case 1 the example of serious and persistent breach of AML/CFT laws.	5.2	5.1	5.6	5.3	-

Table A2: Summary of Minor Amendments

Applicability to each Law or Order is indicated by the relevant Article number(s) in square brackets.

	Topic	Outline	CIF(J)L	BB(J)L	IB(J)L	FS(J)L	SBL
OMNIBUS LAW							
1		Define “principal Law”.	[1]	[1]	[1]	[1]	[1]
2	Interpretation	Define “documents”. Change to term for “Royal Court”.	[1] 1,22,29]	[1]	[1]	-	[1]
3	Definitions	Move power to amend Article 3 by Regulations (from Article 38) and delete duplicate provisions.	[1] [38]	-	-	-	-
4	Grant or refusal of a permit	Remove superfluous words “fails to comply with”.	[7]	-	-	-	-
5	Delay in decision taking effect	Remove the word “before”. Grammatical amendment that has no material effect on the meaning of the clause.	[8E]	[18]	8A]	-	-
6	Refusal or cancellation of a permit	Correct a manifest error in the wording of Article 7(11).	-	-	[7]	-	-
7	Powers of intervention	Alter the layout of words in clause (1) of Article 36B for consistency in law drafting style. (No change to the meaning).	-	-	[36B]	-	-
8	Public statements	Minor alteration to the reference to another Article.	-	-	[43]	-	-
9	Permitted disclosures	Change to the arrangement of the final part of Article 38(1) (l): to make applicability clearer. No change to the words themselves.	-	-	-	[38]	-
10	Various	Consequential amendment to correct references to other Articles amended.	[24] [32]	[28-30, 34] [45] [47]	[11] [13&14] [33]	[18] [33/34]	[31] [32]
11	Various	Definition of ‘consumers’ of TCB services.	-	-	-	[various]	-
OMNIBUS ORDER							
12	Definition	Add definition of the term “Law”.	-	-	4	-	-

APPENDIX B

List of respondents to the Consultation Paper

- Jersey Finance Limited (which included one response from a trade association member).
- HSBC (on behalf of various members of that group of companies);
- HSBC Bank of the Middle East Limited;
- Royal Bank of Scotland International.

APPENDIX C

Revised draft of Article 36 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

For Article 36 of the principal Law the following Article shall be substituted –

“36 Permitted disclosures

- (1) Article 35 does not preclude the disclosure of information –
- (a) by a supervisory body –
 - (i) to the Viscount,
 - (ii) to any person for the purpose of enabling or assisting that person to exercise that person’s statutory functions in relation to any person or class of person in respect of whom the supervisory body has or had statutory functions,
 - (iii) to the Comptroller and Auditor General for the purpose of enabling or assisting the exercise of any of his or her functions in relation to the supervisory body,~~or~~
 - (iv) to a relevant overseas supervisory authority pursuant to Article 39, or
 - (v) to any person for the purposes of enabling or assisting that person to exercise that person’s statutory control functions in relation to any person or class of person in respect of whom the supervisory body does not have statutory functions;
 - (b) by or to any person in any case in which disclosure is for the purpose of –
 - (i) enabling or assisting any supervisory body, or any person acting on its behalf, to exercise that body’s, or that person’s, functions, or
 - (ii) enabling or assisting any person appointed, under an enactment, by –
 - (A) a supervisory body,
 - (B) the Court, on the application of a supervisory body, or
 - (C) a Minister,
 to exercise the functions of the person so appointed, or the functions of the supervisory body, under this Law or under any other enactment;
 - (c) to a person by a supervisory body,~~where the information (which may include the conditions, if any, attached under Article 17 to the registration, if any) shows~~ showing whether or not any person is registered or was formerly registered under this Law, including any conditions which are attached or were formerly attached to the registration of that person under Article 17;
 - (d) with a view to the investigation of a suspected offence, or to the institution of, or for the purposes of, any criminal proceedings, whether under this Law or not;
 - (e) in connection with any other proceedings arising under this Law;
 - (f) subject to paragraph (2), by –
 - (i) a supervisory body, or
 - (ii) a person appointed under an enactment by –

- (A) a supervisory body,
 - (B) the Court, on the application of a supervisory body, or
 - (C) a Minister, where that enactment prescribes that the Minister and a supervisory body each have power to appoint that person,
- to any person or body responsible for setting standards of conduct for a profession and having powers to discipline persons who fail to meet those standards;
- (g) by a supervisory body to the Attorney General or to a police officer, if the information –
 - (i) has been obtained under Article 30, 31 or 32, or
 - (ii) is in the possession of the supervisory body and relates to any matter in relation to which a power under Article 30, 31 or 32 is exercisable;
 - (h) by a supervisory body to the auditor of –
 - (i) a supervised person or formerly supervised person, or
 - (ii) a person who appears to the supervisory body to have acted in contravention of Article 10,

where it appears to the supervisory body that disclosing the information would be in the interests of persons who transacted or may transact supervised business with such a person; ~~or~~

 - (i) by a supervisory body to any person acting on behalf of an international body or international organization where the body's or organization's functions include the assessment of Jersey's compliance with international standards relating to measures against money-laundering or the financing of terrorism and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions; ~~or~~
 - (j) **subject to paragraphs (6) to (8), by a supervisory body to any of the following organizations or persons –**
 - (i) **the ESAs, or**
 - (ii) **a supervisor of a securities market.**
- (2) Paragraph (1)(f) shall have effect only if it appears to the supervisory body or to the appointed person (as the case requires) that disclosing the information (as referred to in that sub-paragraph) would enable or assist the person or body responsible for setting standards to exercise his, her or its functions in relation to a person who fails, or is alleged to have failed, to meet those standards.
 - (3) Article 35 does not preclude the Attorney General from further disclosing the information already disclosed to him or her as referred to in paragraph (1)(g) if he or she makes the further disclosure –
 - (a) for the purposes of an investigation into a suspected offence, or of a prosecution, in Jersey; or
 - (b) for the purposes of an investigation into a suspected offence, or of a prosecution, in a country or territory outside Jersey.
 - (4) Article 35 does not preclude a police officer from further disclosing the information already disclosed to him or her as referred to in paragraph (1)(g) if he or she makes the further disclosure –
 - (a) for the purposes of an investigation into a suspected offence, or of a prosecution, in Jersey; or
 - (b) with the permission of the Attorney General and for the purposes of an investigation into a suspected offence, or of a prosecution, in a country or territory outside Jersey.

- (5) A party shall not make a disclosure under or by virtue of paragraph (1)(a)(ii), ~~(iii) or (iv)~~, (iv) or ~~(v) or (b)~~, (f), (i) or ~~(j)~~ or Article 39(1)(g) unless satisfied that the party to whom disclosure is made complies with or will comply with any conditions to which the party making the disclosure may, in its discretion, subject the disclosure.
- ~~(6)~~ (6) The supervisory body shall not disclose information under paragraph (1)(j) unless satisfied that –
- (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
 - (b) that organization or person will treat the disclosed information with appropriate confidentiality.
- (7) In deciding whether to disclose information under paragraph (1)(j), the supervisory body may take the following factors (among others) into account –
- (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the supervisory body;
 - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
 - (c) the seriousness of the case and its importance in Jersey;
 - (d) whether the information could be obtained by other means; and
 - (e) whether it is otherwise appropriate in the public interest to disclose the information.
- (8) The supervisory body may refuse to disclose information under paragraph (1)(j) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the supervisory body considers appropriate.
- (9) The States may by Regulations amend this Article by –
- (a) adding further parties to or by whom disclosure may be made and specifying in each case the purpose for which disclosure may be made; or
 - (b) amending the circumstances of disclosure, including the purposes for which and conditions under which disclosure may be made.²².
- (10) In paragraph (1)(a)(v), ‘statutory control functions’ means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, or to give consent or any other form of authorization or permission, to or in respect of, or to register, any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.”.